**A comparative review of post-petition financing in the United States, England & Wales and Singapore.**

**Peter Madden – Global Insolvency Practice Course 2023/2024**

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1. INTRODUCTION

Post-petition or DIP financing (referred to in this paper as “**Post-Petition Financing**”) refers to financing which is extended to a debtor following its entry into a formal insolvency or restructuring procedure. The purpose of Post-Petition Financing is to facilitate the restructuring or reorganisation of a debtor by providing funding to finance the operations of the debtor while the restructuring or reorganisation takes place. Accordingly, Post-Petition Financing is a critical aspect in the effectiveness of insolvency and restructuring procedures in many jurisdictions.

This paper compares the following forms of Post-Petition Financing:

* Post-Petition Financing in the United States under Section 364 of Title 11 of the United States Code (the “**US Bankruptcy Code**”) (“**DIP Financing**”);
* Post-Petition Financing in England & Wales incurred by an administrator in accordance with the general powers afforded to administrators under the Insolvency Act 1986 (the “**IA 1986**”) and the Insolvency (England and Wales) Rules 2016 (the “**IR 2016**”);
* Post-Petition Financing in Singapore under sections 67 and 101 of the Insolvency, Restructuring and Dissolution Act 2018 (the “**IRDA**”) (“**Super Priority Rescue Financing**”); and
* Post-Petition Financing in Singapore incurred by a judicial manager in accordance with the general powers afforded to judicial managers under the IRDA.

This paper compares the legislative process and market terms pursuant to which debtors are able to access the aforementioned forms of Post-Petition Financing in the United States, England & Wales and Singapore, including the ability for debtors in those jurisdictions to prime existing lenders and to ‘roll-up’ pre-petition debt into the Post-Petition Financing.

1. THE UNITED STATES
	1. The legislative framework

 Section 364 of the US Bankruptcy Code regulates the ability of a debtor undergoing a Chapter 11 process to obtain DIP Financing.

 The forms of DIP Financing available are differentiated by the level of priority afforded and the statutory conditions needing to be satisfied. Broadly, the higher the priority sought, the more stringent the statutory conditions.

 Aside from administrative expense DIP Financing incurred in the ‘ordinary course of business’ of the debtor, all forms of DIP Financing under Section 364 of the US Bankruptcy Code require ‘notice and a hearing’ before the relevant Court.

 DIP Financing has become an essential aspect of the Chapter 11 process in the United States. In addition to providing fresh capital to a distressed debtor, the market for DIP Financing has developed to provide DIP Financing creditors with significant ability to influence and control both the Chapter 11 process as well as the refinancing of the debtor following its exit from the Chapter 11 process.

* 1. Ability to prime existing lenders

 Section 364 of the US Bankruptcy Code offers multiple routes for DIP Financing creditors to prime existing creditors. The levels of priming are set out below.

* Administrative expense DIP Financing[[1]](#footnote-1): DIP Financings incurred on an unsecured basis with administrative expense priority are afforded priority over unsecured pre-petition debts of the debtor. If the DIP Financing is incurred outside the ‘ordinary course of business’ of the debtor, Court approval is required. In practice, given that ‘ordinary course of business’ is not defined in the US Bankruptcy Code, creditors will generally require the debtor to obtain the Court’s approval as a safeguard against challenge.[[2]](#footnote-2)
* ‘Super priority’ administrative expense DIP Financing[[3]](#footnote-3): DIP Financing incurred on a ‘super-priority’ administrative expense basis will be afforded priority over all administrative expenses set out under sections 503(b) and 507(b) of the US Bankruptcy Code as well as most unsecured claims of the debtor, although ‘super-priority’ administrative expense DIP Financing will continue to rank below the secured debt of the debtor. This form of DIP Financing requires the Court’s approval prior to incurrence. In order to obtain the Court’s approval, the debtor must demonstrate that it made efforts to obtain financing on an administrative expense priority basis. The debtor's efforts do not have to be exhaustive, just sufficient under the circumstances.[[4]](#footnote-4)
* DIP Financing secured over assets of the debtor not otherwise subject to security[[5]](#footnote-5): DIP Financing incurred under this sub-section benefits from security over ‘unencumbered assets’ of the debtor. This form of DIP Financing requires the Court’s approval and the debtor must demonstrate that it made efforts to obtain financing on an administrative expense priority basis.
* DIP Financing secured by junior liens over assets of the debtor which are already subject to security[[6]](#footnote-6): DIP Financing incurred under this sub-section benefits from junior security on property and assets of the debtor which are already subject to security in favour of existing creditors of the debtor. This form of DIP Financing requires the Court’s approval and the debtor must demonstrate that it made efforts to obtain financing on an administrative expense priority basis.
* DIP Financing secured by senior or equal liens over assets of the debtor which are already subject to security[[7]](#footnote-7): DIP Financing incurred under this sub-section permits a debtor, with the Court’s approval, to incur DIP Financing which primes the debt of an existing secured creditor. However, the incurrence of such priming DIP Financing is only available where (i) the debtor is able to demonstrate that it made efforts but was unable to obtain financing otherwise and (ii) the existing secured creditors either consent to the priming DIP Financing or the debtor is able to establish that the existing secured creditors are adequately protected from the diminution in the value of their collateral resulting from the priming DIP Financing.
	1. Ability to roll-up pre-petition debt

A ‘roll-up’ refers to DIP Financing which, in addition to providing some fresh capital to the debtor, is used to effectively repay existing or pre-petition debt and replace it with post-petition debt. The specific mechanics of a roll-up can vary but the purpose of a roll-up is to improve the priority status of the existing or pre-petition debt.

Roll-ups are sometimes seen as controversial due to their perceived overriding of the priority scheme in the Bankruptcy Code.[[8]](#footnote-8) Conversely, the justification for roll-ups is that they encourage the provision of DIP Financing by existing lenders, who are incentivised to lend in return for an improvement in the priority in their existing debt as well as potentially improving the terms of their existing debt through tighter covenants and increased economics.[[9]](#footnote-9)

Despite the negative commentary, roll-ups have become a “*fairly standard feature*” of ‘defensive’[[10]](#footnote-10) DIP Financings in recent years.[[11]](#footnote-11) This is evidenced by both the commonality of roll-ups in DIP Financing applications as well as the increasingly aggressive terms of such roll-ups, particularly in relation to the ratio of pre-petition debt to new money. In this respect, the DIP Financings in the recent restructurings of Rockall[[12]](#footnote-12) and Phoenix Services[[13]](#footnote-13) featured roll-up ratios of 2:1 and 3:1, respectively. In those cases, while the roll-up DIP Financings were closely scrutinised by the Court and the creditor committees, the roll-up DIP Financings were ultimately approved.[[14]](#footnote-14)

Courts are more likely to approve the terms of a roll-up DIP Financing when the debtor's only other option is to liquidate.[[15]](#footnote-15) Accordingly, where there are competing or alternative financing options available to a debtor, this will lead to more competitive or debtor-friendly terms being included in a roll-up DIP Financing. In this respect, it has been argued that roll-up DIP Financings are a feature of weak credit markets and that, therefore, roll-up DIP Financings should be less prevalent when credit markets are robust.[[16]](#footnote-16) Accordingly, it appears that the terms of roll-up DIP Financings are largely moderated by market factors.

* 1. Market for DIP Financing in the United States

DIP Financings in the United States are continually developing and adjusting to market needs. In addition to the development of roll-ups, DIP Financings in recent years have notably featured the development of equity conversions (whereby DIP Financing debt may be converted into equity of the debtor following its emergence from Chapter 11)[[17]](#footnote-17) and increased control by DIP Financing lenders over the outcomes of Chapter 11 cases through the use of strict covenants and milestones in DIP Financing loans.[[18]](#footnote-18)

Despite objections to some of the more aggressive developments with respect to the terms of DIP Financings, it is clear that the market for DIP Financing remains strong, as evidenced by the volume of DIP Financing market in 2022 being approximately US$7.6 billion in total.[[19]](#footnote-19)

The ability of DIP Financings in the United States to react to market needs is testament to the combination of clear statutory conditions for the assignment of priority to DIP Financings as well as the comfort that can be obtained by DIP Financing creditors from the Court’s approval. In this respect, DIP Financings under the Bankruptcy Code have been described as a ‘statutory model’ of Post-Petition Financing .[[20]](#footnote-20)

On the back of this ‘statutory model’, well-established market processes[[21]](#footnote-21) have developed in DIP Financings which has led to a deep and robust market for Post-Petition Financings in the United States.

1. ENGLAND & WALES
	1. The legislative framework

 Unlike the United States or Singapore, the insolvency legislation in England & Wales does not provide a specific statutory framework for Post-Petition Financing.[[22]](#footnote-22)

 Nonetheless, while there is no specific statutory framework for Post-Petition Financing in England & Wales, an administrator appointed to a debtor is able to obtain Post-Petition Financing pursuant to the powers granted to administrators under the IA 1986 and the IR 2016. These powers may, in effect, provide a level of protection similar to Post-Petition Financing in other jurisdictions.

 Under the IA 1986, an administrator may do anything necessary or expedient for the management of the affairs, business and property of the debtor.[[23]](#footnote-23) Furthermore, an administrator is granted the power to “*raise or borrow money and grant security therefor over the property of the company*.”[[24]](#footnote-24) Accordingly, there is a statutory basis for an administrator, subject to the statutory and common law duties imposed on an administrator, to incur Post-Petition Financing on a secured or unsecured basis.

* 1. Ability to prime existing lenders

 The level of priority afforded to Post-Petition Financing incurred by an administrator will depend on whether the Post-Petition Financing is deemed an administration expense or what is sometimes referred to as a ‘super priority liability’.[[25]](#footnote-25)

 Broadly, Post-Petition Financing which is deemed an administration expense will be paid out in priority to floating charge creditors[[26]](#footnote-26) but subsequent to fixed charge creditors. The priority as between different forms of administration expenses is set out in the waterfall in Rule 3.51 of the IR 2016.

Where Post-Petition Financing incurred by an administrator falls within paragraph 99(4) of Schedule B1 to the IA 1986, it will be paid out in priority to administration expenses and floating charge creditors, but subsequent to fixed charge creditors. In order for Post-Petition Financing to fall within paragraph 99(4) of Schedule B1 to the IA 1986, such Post-Petition Financing must constitute a debt or liability arising out of a contract entered into by an administrator during the course of the administration. Further, such contract must come into existence by virtue of a “*positive and conscious act by the administrator*”.[[27]](#footnote-27)

 Accordingly, Post-Petition Financing in England & Wales does provide for some limited ability to prime existing lenders, although, critically, it is not possible for Post-Petition Financing to prime debt secured by a fixed charge without the consent of the relevant existing secured creditors.

* 1. Ability to roll-up pre-petition debt

 It has been proposed that it may be possible under the IA 1986 and the IR 2016 for Post-Petition Financing to include a roll-up of pre-petition debt.[[28]](#footnote-28)

 In this respect, in order to fall within paragraph 99(4) of Schedule B1 to the IA 1986, the providers of the Post-Petition Financing would need to enter into a new contract with the administrators of the debtor which, in addition to providing fresh financing to the debtor, restated the terms of existing debt in order to roll that debt up into the Post-Petition Financing. The new ‘roll-up’ Post-Petition Financing would also need to be entered into as a result of a ‘positive and conscious act’ of the administrator (as opposed to being a deemed contract[[29]](#footnote-29)) and would need to be properly incurred within the meaning of rule 3.51(2) of the IR 2016.[[30]](#footnote-30)

* 1. Market for Post-Petition Financing in England & Wales

 The absence of a clear statutory regime for a debtor or administrator to apply to Court in order to incur Post-Petition Financing, as well as the inability to prime fixed charge secured creditors, has led to administrators generally seeking to incur Post-Petition Financing in accordance with and to the extent permitted by the terms of the relevant existing finance documents.[[31]](#footnote-31) This form of Post-Petition Financing has been referred to as ‘market-based model’.[[32]](#footnote-32)

 For example, an administrator may seek to obtain the requisite consent from creditors under the existing finance documents to incur secured debt on unencumbered assets or to amend the terms of an existing intercreditor agreement to afford priority to Post-Petition Financing. The extent to which Post-Petition Financing can be incurred in this way will depend on the terms of the existing finance documents. Provided the requisite threshold of creditors approve, there is broad flexibility with respect to the potential terms of a Post-Petition Financing.

 Additionally, administrators may still rely on the general powers afforded to administrators under the IA 1986 and the IR 2016 to incur Post-Petition Financing. One advantage of this form of Post-Petition Financing is that it is an ‘out-of-court’ process, meaning that the process is generally likely to be less expensive, more discrete and faster compared to a process such as DIP Financing.

 However, the relative lack of judicial consideration for this form of Post-Petition Financing as well as the mixed views of academics on the extent to which administrators can incur Post-Petition Financing,[[33]](#footnote-33) suggests that administrators are reluctant to push the boundaries so as to reduce the risk of challenge by other creditors (particularly as the new money would normally have been advanced by the time of challenge). By comparison, a debtor in the United States has relatively clear and established judicial and statutory procedure to follow in order to obtain Post-Petition Financing.

1. SINGAPORE
	1. The legislative framework
		1. *Super Priority Rescue Financing*

 Singapore’s Super Priority Rescue Financing regime was partly inspired by Section 364 of the US Bankruptcy Code.[[34]](#footnote-34) The similarities have been noticed judicially[[35]](#footnote-35) and Singapore Courts will consider United States’ case law in interpreting Singapore’s Super Priority Rescue Financing regime.

 Super Priority Rescue Financing is available to a debtor undergoing either a scheme of arrangement or judicial management proceedings.[[36]](#footnote-36) The debtor applying for Super Priority Rescue Financing under section 67 of the IRDA must have already made an application (i) to propose a scheme of arrangement under section 210(1) of the Companies Act (the “**CA 1967**”) or (ii) to obtain a moratorium under section 64(1) of the IRDA.[[37]](#footnote-37) Given that a scheme of arrangement does not need to have been proposed at the point of applying for a moratorium,[[38]](#footnote-38) section 67(1) of the IRDA in effect allows a debtor to obtain priority for Super Priority Rescue Financing while a compromise or arrangement is being developed and negotiated between the debtor and its creditors.

 Super Priority Rescue Financing must also constitute ‘rescue financing’. Super Priority Rescue Financing will constitute ‘rescue financing’ provided that it satisfies either or both of the following conditions: (i) the financing is necessary for the survival of the debtor that obtains the financing, or of the whole or any part of the undertaking of that debtor, as a going concern (ii) the financing is necessary to achieve a more advantageous realisation of the assets of the debtor that obtains the financing, than on a winding up of that debtor.[[39]](#footnote-39)

* + 1. *Post-Petition Financing incurred by judicial managers*

 Similar to the powers granted to administrators in England & Wales under the IA 1986 and the IR 2016, a judicial manager in Singapore has the authority to incur Post-Petition Financing by way of the general powers afforded to judicial managers under the IRDA.

 A validly appointed judicial manager has all the powers conferred on the directors of a debtor by the IRDA, the CA 1967 or by the constitution of the debtor.[[40]](#footnote-40) Furthermore, a judicial manager has the powers conferred by the First Schedule to the IRDA[[41]](#footnote-41), which includes the “*power to borrow money and grant security for the borrowing over the property of the company*”.[[42]](#footnote-42) This provides a judicial manager with a statutory basis on which to incur Post-Petition Financing on a secured or unsecured basis.

* 1. Ability to prime existing lenders
		1. *Super Priority Rescue Financing*

 Super Priority Rescue Financing can prime the debt of existing lenders. Similar to Section 364 of the US Bankruptcy Code, there are different levels of priming offered under the Super Priority Rescue Financing regime. In any application for Super Priority Rescue Financing, the applicant must specify from the outset which level of priority it is seeking and be prepared to provide the rationale for the level of priority sought.[[43]](#footnote-43) The greater the level of priority sought by an applicant, the greater the scrutiny by the Courts.[[44]](#footnote-44)

 There are four orders that the Court may grant in relation to the priority of the Super Priority Rescue Financing. These are set out below.

* An order that, if the debtor is wound up, the Super Priority Rescue Financing be deemed as part of the costs and expenses of the winding up in section 203(1)(b) of the IRDA.[[45]](#footnote-45) Super Priority Rescue Financing under this category will also have priority over the claims of floating charge holders of the debtor pursuant to the section 203(6) of the IRDA.
* An order that, if the debtor is wound up, the Super Priority Rescue Financing is to have priority over all preferential debts specified in section 203(1)(a) – (i) of the IRDA and all other unsecured debts of the debtor. An order on these terms is conditional on the debtor not being able to obtain such financing from any person without it being granted this level of priority.[[46]](#footnote-46) Super Priority Rescue Financing under category will also have priority over the claims of floating charge holders.
* An order that the Super Priority Rescue Financing is to be secured by (i) a security interest on property of the debtor that is not otherwise subject to any security interest or (ii) a subordinate security interest on property of the debtor that is subject to an existing security interest.[[47]](#footnote-47) An order on these terms is conditional on the debtor not being able to obtain such financing from any person without it being granted this level of priority.
* An order that the Super Priority Rescue Financing is to be secured by a security interest on property of the debtor that is subject to an existing security interest, of the same priority as or a higher priority than that existing security interest.[[48]](#footnote-48) An order on these terms is conditional on (i) the debtor not being able to obtain such financing from any person without it being granted this level of priority and (ii) there being adequate protection for the interests of the holder of that existing security interest.[[49]](#footnote-49)

Beyond satisfying statutory conditions, the Court retains discretion as to whether to approve a debtor’s application for Super Priority Rescue Financing.[[50]](#footnote-50)

In *Re DSG[[51]](#footnote-51)*, the Court summarised four factors that, whilst not statutory conditions or requirements,[[52]](#footnote-52) it would take into account in considering applications for Super Priority Rescue Financing. These include an assessment of whether (i) other creditors will be unfairly prejudiced by the arrangement, (ii) there is a good probability that the restructuring will succeed (iii) better financing proposals are available and (iv) the terms were reasonable and in the exercise of sound business judgment.[[53]](#footnote-53)

* + 1. *Post-Petition Financing incurred by judicial managers*

 In relation to Post-Petition Financing incurred by a judicial manager in accordance with the general powers granted to judicial managers under the IRDA, there is an ability for such Post-Petition Financing to prime existing creditors.

 A judicial manager is entitled to have his or her remuneration and expenses, which have been properly incurred, paid out of the property of the debtor in priority to all other debts, except for those debts subject to a security which is either (i) not a floating charge or (ii) granted in connection with Super Priority Rescue Financing.[[54]](#footnote-54)

Accordingly, provided Post-Petition Financing is properly incurred by a judicial manger as an expense of the judicial management of a debtor, there is a statutory basis for a judicial manager to have that expense (being the Post-Petition Financing) paid out ahead of the debts of all existing unsecured creditors as well as the debts of existing creditors which are subject to a floating charge. In considering the meaning of ‘properly incurred’, the Court will consider various factors including the purpose for which the Post-Petition Financing was sought[[55]](#footnote-55) and whether the Post-Petition Financing was for the benefit of the debtor’s estate.[[56]](#footnote-56)

 Additionally, a judicial manager is permitted under the IRDA to grant security for borrowings over the property of the company.[[57]](#footnote-57) This will operate to prime the claims of existing unsecured creditors of the debtor. Accordingly, to the extent that there are unencumbered assets of the debtor, a judicial manager may incur Post-Petition Financing which is secured over such unencumbered assets.

* 1. Ability to roll-up pre-petition debt
		1. *Super Priority Rescue Financing*

 *Re DSG* established that ‘roll-ups’ are not prohibited under Singapore’s Super Priority Rescue Financing regime and, further, that roll-ups achieve the purpose of encouraging and facilitating rescue financing, which is in line with the legislative intent of the IRDA.[[58]](#footnote-58)

 However, it was also noted in *Re DSG* that roll-ups must create new value for the debtor in order to be regarded as rescue financing.[[59]](#footnote-59) Further, the new funds advanced must not be “*a miniscule or token amount*” and should instead provide support for the debtor undergoing a restructuring and lead to some benefit for it.[[60]](#footnote-60) Accordingly, in assessing the adequacy of a proposed roll-up under the Super Priority Rescue Financing regime, the terms and conditions of the proposed roll-up will need to be “*scrutinised on a case of case basis*”.[[61]](#footnote-61)

* + 1. *Post-Petition Financing incurred by judicial managers*

 The language used in the provisions relating to remuneration and expenses of (i) an administrator in England & Wales under the IA 1986 and the IR 2016 and (ii) a judicial manager under the IRDA, is broadly similar. In particular, both an administrator and a judicial manager are granted the power to ‘borrow money’ and ‘grant security’ for that borrowing.[[62]](#footnote-62) Furthermore, in order for the money borrowed to be considered an expense of the administration or judicial management, there is the identical requirement that the relevant expense must be ‘properly incurred’ by the administrator or judicial manager, respectively.[[63]](#footnote-63)

 Accordingly, given the similarity in the language used in the two statutory regimes, there is a theoretical basis for the proposition put forward in Section III(C) above (i.e. that it may be possible under the IA 1986 and the IR 2016 for Post-Petition Financing to include a roll-up of pre-petition debt[[64]](#footnote-64)) to be similarly applied in Singapore with respect to roll-ups of pre-petition debt by a judicial manager.

* 1. Market for Post-Petition Financing in Singapore

 Although Singapore’s Super Priority Rescue Financing regime was only introduced in 2017, there have been a number of cases involving applications for Super Priority Rescue Financing, demonstrating that creditors and debtors in the Singapore restructuring and insolvency market are clearly aware and interested in the concept.[[65]](#footnote-65)

Furthermore, the Courts have demonstrated a willingness to consider more aggressive forms of Super Priority Rescue Financing in the form of roll-ups, which demonstrates that Super Priority Rescue Financing has advanced rapidly in sophistication in a relatively short period of time.

 However, one area that has not yet received extensive judicial consideration is the priming of existing fixed charges and the requirement for the debtor to provide ‘adequate protection’ to the existing secured creditor. It will interesting to see whether Courts in Singapore follow the case law of the United States or instead adopt a different approach for the Singapore Post-Petition Financing market.

 Outside of the Super Priority Rescue Financing regime, judicial managers are able to incur Post-Petition Financing pursuant to the general powers granted to judicial managers under the IRDA. In this respect, a judicial manager is able to incur debt with ‘administrative expense’ priority using either (i) the general powers of the IRDA or (ii) Super Priority Rescue Financing regime.

It will be of interest of see how the Post-Petition Financing develops in this respect. It may be that judicial managers prefer to incur Post-Petition Financing under the general powers of the IRDA so as to avoid the time, cost and publicity of an application to Court for Super Priority Rescue Financing. Conversely, the argument might be raised that a creditor providing financing would prefer the judicial manager to apply for Super Priority Rescue Financing under the statutory regime as a means of obtaining greater certainty from the Court’s ‘stamp of approval’ for the financing. Ultimately it may come down to the facts of the specific case, including the level of distress facing the debtor, the profile of the existing and new creditors as well as the terms and priority of the proposed new financing.

1. CONCLUSION

DIP Financings and Super Priority Rescue Financings benefit from clear statutory regimes with respect to the level of priority afforded to the new debt and the conditions for obtaining the Court’s approval. This may explain why these Post-Petition Financing regimes have seen the development of more aggressive financing terms, such as priming of secured debt and roll-ups.

On the other end of the spectrum, creditors lending new money to administrators or judicial managers appear to be more cautious in their forms of financing, which may be explained by the fact that such financings might only be given judicial approval (or disapproval) in the event that the financing is subsequently challenged by another creditor or interested party (at which point the new money has usually been advanced). As a result, the new creditors in those forms of financings appear more willing to negotiate with existing creditors in the context of the existing finance documents in order to reduce the risk of challenge. This is despite these forms of financings (as well as priming and (potentially) roll-ups) being *prima facie* permitted by the relevant statutory codes.

However, a benefit of Post-Petition Financing incurred by administrators and judicial managers is that it is undertaken out of Court, meaning that it generally is a less expensive, discrete and faster process. This affords a level of flexibility to administrators and judicial managers of distressed debtors who may not have the time or resources to seek the Court’s approval before obtaining Post-Petition Financing.

As a final note, it should be noted that Singapore benefits from both types of Post-Petition Financing, in the form of Super Priority Rescue Financing and Post-Petition Financing incurred by a judicial manager under its general powers. Accordingly, of the three jurisdictions considered in this paper, it is arguable that Singapore offers the broadest range of Post-Petition Financing options to a debtor in distress.

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13. In re Phoenix Services Topco, LLC, et al, No. 22-10906 (Bankr. Del. 2022). [↑](#footnote-ref-13)
14. *op cit* note 9, 127. [↑](#footnote-ref-14)
15. Practical Law Bankruptcy & Restructuring and Practical Law Finance, “Roll-Up DIP Financing, Practical Law Practice Note 1-386-8691”, 2. [↑](#footnote-ref-15)
16. *op cit* note 9, 131. [↑](#footnote-ref-16)
17. *Ibid*. [↑](#footnote-ref-17)
18. Ayotte, Kenneth and Ellias, Jared A, “Bankruptcy Process for Sale” (January 5, 2021). UC Hastings Research Paper No. 382, Yale Journal on Regulation, Vol. 39, No. 1, 2021, 13. [↑](#footnote-ref-18)
19. *op cit* note 4, 13. [↑](#footnote-ref-19)
20. *op cit* note 2, 849. [↑](#footnote-ref-20)
21. *op cit* note 9, 122. [↑](#footnote-ref-21)
22. *op cit* note 2, 866. [↑](#footnote-ref-22)
23. Paragraph 59(1), Schedule B1, IA 1986. [↑](#footnote-ref-23)
24. Paragraph 1, Schedule 1, IA 1986. [↑](#footnote-ref-24)
25. *Laverty v British Gas Trading Ltd* [2015] 1 BCLC 295 at [61]. [↑](#footnote-ref-25)
26. Paragraph 99(3), Schedule B1, IA 1986. [↑](#footnote-ref-26)
27. *Laverty v British Gas Trading Ltd* [2015] 1 BCLC 295 at [64]. [↑](#footnote-ref-27)
28. Toube QC, Felicity, Stonefrost, Hilary, Atkins, Scott and Luck, Dr Kai, “The Case for Further Reform to Strengthen Business Rescue in the UK and Australia: A comparative approach”, South Square Digest (December 2020), 32. [↑](#footnote-ref-28)
29. *Laverty v British Gas Trading Ltd* [2015] 1 BCLC 295 at [61]. [↑](#footnote-ref-29)
30. *op cit* note 28. [↑](#footnote-ref-30)
31. Wood, Philip R, *The Law and Practice of International Finance Series, Volume 1: Principles of International Insolvency*, 3rd edn, Sweet & Maxwell (2019), 567. [↑](#footnote-ref-31)
32. *op cit* note 2, 866. [↑](#footnote-ref-32)
33. Paterson, Sarah, “Discussion Paper Series: The Insolvency Consequences of the Abolition of the Fixed/Floating Charge Distinction”, Secured Transactions Law Reform Project, 22 December 2016, 14. [↑](#footnote-ref-33)
34. See Singapore, Parliamentary Reports, 10 March 2017, Vol. 94, Companies Amendment Bill, second reading speech, paragraph 53: “*To facilitate rescue financing, the Court will be empowered to order that rescue financing be given super-priority. That means priority over all other debts or to be secured by a security interest that has priority over pre-existing security interests, provided the pre-existing interests are adequately protected. This is consistent with the approach in Chapter 11*”. [↑](#footnote-ref-34)
35. *Re Attilan Group Ltd* [2017] SGHC 283 at [50]. [↑](#footnote-ref-35)
36. The Post-Petition Financing regimes in section 67 of the IRDA and section 101 of the IRDA are broadly similar, subject to necessary changes reflecting the differences between scheme of arrangement proceedings and judicial management proceedings. Accordingly, in the interests of space, this paper will only consider Post-Petition Financing in connection with a debtor undergoing a scheme of arrangement. [↑](#footnote-ref-36)
37. Section 67(1), IRDA. [↑](#footnote-ref-37)
38. Section 64(2)(b), IRDA. [↑](#footnote-ref-38)
39. Section 67(9), IRDA. [↑](#footnote-ref-39)
40. Section 99(2), IRDA. [↑](#footnote-ref-40)
41. Section 99(4), IRDA. [↑](#footnote-ref-41)
42. Paragraph (c), First Schedule, IRDA. [↑](#footnote-ref-42)
43. *Re Attilan Group Ltd* [2017] SGHC 283 at [56]. [↑](#footnote-ref-43)
44. Singh, Ajinderpal, Lee Wei, Alexander and Chioh Wen Qiang, Adriel *Insolvency, Restructuring and Dissolution Act Compendium*, LexisNexis (2020), at 87. [↑](#footnote-ref-44)
45. Section 67(1)(a), IRDA. [↑](#footnote-ref-45)
46. Section 67(1)(b), IRDA. [↑](#footnote-ref-46)
47. Section 67(1)(c), IRDA. [↑](#footnote-ref-47)
48. Section 67(1)(d), IRDA. [↑](#footnote-ref-48)
49. Section 67(1)(d), IRDA. [↑](#footnote-ref-49)
50. *Re Design Studio Group Ltd* [2020] SGHC 148 at [23]. [↑](#footnote-ref-50)
51. *Ibid*. [↑](#footnote-ref-51)
52. *Ibid* at [34]. [↑](#footnote-ref-52)
53. *Ibid* at [33]. [↑](#footnote-ref-53)
54. Section 104(3), IRDA. [↑](#footnote-ref-54)
55. *An Guang Shipping Pte Ltd (judicial managers appointed) v Ocean Tankers (Pte) Ltd (in liquidation)* [2022] SGCA 69 at [121]. [↑](#footnote-ref-55)
56. *Ibid* at [57]. [↑](#footnote-ref-56)
57. Paragraph (c), First Schedule, IRDA. [↑](#footnote-ref-57)
58. *Re Design Studio Group Ltd* [2020] SGHC 148 at [44]. [↑](#footnote-ref-58)
59. *Ibid* at [46]. [↑](#footnote-ref-59)
60. *Ibid*. [↑](#footnote-ref-60)
61. *Ibid*. [↑](#footnote-ref-61)
62. Paragraph 1, Schedule 1, IA 1986 and paragraph (c), First Schedule, IRDA. [↑](#footnote-ref-62)
63. Rule 3.51(2), IR 2016 and Section 104(3), IRDA. [↑](#footnote-ref-63)
64. *op cit* note 28. [↑](#footnote-ref-64)
65. See, for example, New Silkroutes (September 2023) and Zipmex (April 2023). [↑](#footnote-ref-65)