Appendix A: Author Statement for Short Paper

Author Statement

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DECLARATION OF HONOUR

I declare that the paper, titled "A comparative analysis of the balance between liquidation and restructuring goals and proceedings in Singapore and the Cayman Islands" is my own work, that it has been prepared independently and that all references to, or quotations from, the work of others are fully and correctly cited.

Signed

Date: 11 March 2024

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A comparative analysis of the balance between liquidation and restructuring goals and proceedings in Singapore and the Cayman Islands

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INTRODUCTION

1. With Cayman's introduction of a standalone restructuring regime in August 2022[1]

[1] Specifically on 31 August 2022, where Cayman's Companies (Amendment) Act 2021 came into effect. Subsequent to the 2021 amendment, there is a further amendment in 2023. However, those latter amendments are irrelevant for the purpose of this paper.

and Singapore's consolidation of its insolvency framework in 2020[2], a dive into the captioned topic became opportune. This is particularly so when the legal foundations of both jurisdictions were historically derived from English law, which entail certain conceptual similarities. Whilst both jurisdictions show significant initiatives in reforming their restructuring regimes, this paper argues that Singapore emphasises more on its restructuring goals and proceedings than its liquidation counterpart, whereas Cayman's equilibrium on liquidation and restructuring seems to be more balanced. In reaching this conclusion, this paper will explore the economical motivation and legislative intents behind Cayman and Singapore's reforms to assess their "goals" (section A), outline the notable features of their respective regimes (section B), and make comparisons between the two (section C).

2. Due to the confines of space, this paper focuses mainly on the statutory frameworks of the jurisdictions, meaning that processes outside the statutory framework will be omitted.

A. THE LIQUIDATION AND RESTRUCTURING GOALS

3. One direction at examining a jurisdiction's liquidation and restructuring "goals" is by first understanding its economic landscape, which gives context to the thought processes of lawmakers.

A1. Economic motivation

4. Whilst pronounced as a "*global center of excellence in financial services*"[3], it was once mentioned that "*the nature of [Cayman's] economy is such that purely domestic insolvency proceedings are practically unknown*"[4]. As acknowledged in Cayman's

[2] Specifically on 20 July 2020, where Singapore's Insolvency, Restructuring and Dissolution Act came into effect.
[3] 2 December 2021, Parliament of the Cayman Islands, Official Hansard Report, Second Meeting of the 2021/2022 Session Forth Sitting, p.10, <https://parliament.ky/wp-content/uploads/2023/08/4th-Sitting-2nd-Meeting-2-12-2021.pdf> Accessed on 21 February 2021
[4] 29 May 2002, G. James Cleaver & Andrew J. Jones QC, Report on Recognition and Cooperation In Cross-Border Insolvency Matters §3.1 <https://www.gov.ky/publication-detail/uncitral-report-cross-border-insolvency-matters> Accessed on 21 February 2024

Law Reform Commission in its review of the corporate insolvency law in 2006[5], "*Cayman Islands insolvency law focuses upon the rights of creditors as a result of which a huge volume of capital markets and asset finance business is placed through Cayman Islands incorporated Companies*".[6] Indeed, as of 2021, most companies (1,234 out of 2,219) listed on the Hong Kong Stock Exchange are incorporated in Cayman[7].

5. Accordingly, the Caymanians understand it is "*critically important to maintain [Cayman's] current status as a 'creditor friendly jurisdiction'*"[8], which commentaries also concur.[9]

6. The situation is slightly different in Singapore, which is a "*financial and business hub*" with not just high level of cross-border commerce and more than 37,000 international companies[10], but also 200,000 small enterprises[11] and "*more than 4,000 tech startups in Singapore, 400 venture capital firms, another 200 incubators and accelerators*"[12] locally. In respect of Singapore's allegiance, its official stance is "*neither pro-creditor nor pro-debtor*"[13], though commentaries generally agree that its post-2017 reforms turned it into more debtor-friendly.[14]

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[5] Whilst this report was written quite some time ago, it seems to be the most updated one relating to Cayman's Insolvency Law — as shown on p.18 of the Cayman Islands Law Reform Commission's Annual Report No.17, showing the full list of "Final Reports" by Cayman's Law Reform Commission < https://www.gov.ky/publication-detail/law-reform-commission-annual-report-17> Accessed on 21 February 2024

[6] 12 April 2006, Report of the Law Reform Commission, Review of the Corporate Insolvency Law and Recommendations for the Amendment of Part V of the Companies Law, §3.2

[7] HKEX Fact Book 2021, p.33

[8] Report of the Law Reform Commission, Review of the Corporate Insolvency Law and Recommendations for the Amendment of Part V of the Companies Law, §2 (supra)

[9] See for example (1) January 2022, Allen & Overy, Restructuring across border, Cayman Island, Corporate restructuring and insolvency procedures; (2) Carey Olsen, The Legal 500 Restructuring & Insolvency country comparative guide- Q&A, Cayman Islands (3) 30 April 2018, Davidson, Heaver-Wren & Clarkson,III, The International Scene, American Bankruptcy Institute Journal.

[10] 22 November 2023, Speech by Minister for Culture, Community and Youth and Second Minister for Law Edwin Tong SC at the Singapore Insolvency Conference 2023, §16 <https://www.mlaw.gov.sg/news/speeches/speech-2m-edwin-tong-sg-insolvency-conference-2023/> Accessed on 21 February 2024

[11] Ibid, §32

[12] Ibid, §16

[13] Ibid, §12

[14] See for example (1) Clifford Chance, A Guide to Asia Pacific Restructuring and Insolvency Procedures < https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2013/08/a-guide-to-asia-pacific-restructuring-and-insolvency-procedures.pdf> Accessed on 21 February 2024; and (2) 10 January 2023, Asian Legal Business, A Time for Turnarounds< https://www.legalbusinessonline.com/features/time-turnarounds > Accessed on 21 February 2024.

7. Naturally, a debtor-friendly jurisdiction stresses the culture of rescue. On the other hand, a creditor-friendly jurisdiction is not automatically equivalent to favoring liquidation over restructuring, as it could still promote the culture of rescue but at the same time give creditors main controls.

8. For clarity, being "creditor-friendly" entails variables such as (1) ability to enforce security interest during restructuring procedure, (2) low risk of being negatively affected by cross-class cramdown, (3) no restriction of ipso facto clauses, (4) ability to be part of a committee of creditors with monitoring functions, and (5) existence of insolvency practitioner[15] etc. Whereas being "debtor-friendly" entails variables such as (1) financial conditions needed for the commencement of the reorganization procedure, (2) flexibility of directors' duties in the zone of insolvency, (3) moratorium, (4) debtor in possession, and (5) cross-class cramdown[16] etc.

9. Having set the economic contexts in place, this paper now turns to the legislative intents of each jurisdictions' insolvency reforms.

A2. Legislative Intents in Singapore

10. Singapore's Insolvency, Restructuring and Dissolution Act 2018 ("**IRDA**") came into effect in 2020. The IRDA is a part of the puzzles to Singapore's insolvency reform[17], and one should also take heed to Singapore's Companies Act 2017 (part of IRDA's prelude) in order to fully understand the legislative intentions of Singapore's insolvency reform.

11. According to the Senior Minister of State, Ms. Indranee Rajah SC, the Companies

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[15] 31 August 2023, Gurrea-Martínez, The Myth of Debtor-Friendly or Creditor-Friendly Insolvency Systems: Evidence from a New Global Insolvency Index, Singapore Management University Yong Pung How School of Law, Research Paper 4/2023, p. 5

[16] Ibid, p.5

[17] 1 October 2018, Second Reading Speech By Senior Minister of State for Law, Mr. Edwin Tong, on the Insolvency, Restructuring and Dissolution Bill §4 <https://www.mlaw.gov.sg/news/parliamentary-speeches/second-reading-speech-sms-edwin-tong-insolvency-omnibus-bill/> Accessed on 19 February 2024

Act 2017 was intended "*to enhance Singapore's debt restructuring framework*".[18] Further, according to the Senior Minister of State for Law, Mr. Edwin Tong, the 2017 Companies Act "*was amended to enhance [Singapore]'s corporate rescue and debt restructuring process and to strengthen Singapore as a forum of choice for debt restructuring.*" [19] In fact, the Companies Act 2017 and IRDA were based on recommendations by Singapore's two committees, namely the Insolvency Law Review Committee, and the Committee to Strengthen Singapore as an International Centre for Debt Restructuring.[20] The name of the latter committee itself is telling of Singapore's ambition to develop restructuring. By contrast, in the aforementioned government officials' speeches, little is mentioned about Singapore's liquidation goals. In fact, Mr. Edwin Tong stated that "*a successful debt restructuring avoids liquidation*"[21], which perhaps explains why liquidation is not a stated purpose.

12. For completeness, Singapore does provide procedures that facilitate the liquidation of non-viable businesses — for example the Simplified Insolvency Programme ("**SIP**") for micro and small companies ("**MSCs**"), which provides for (1) Simplified Debt Restructuring Programme ("**SDRP**") and Simplified Winding Up Programme ("**SWUP**")[22]. However, the fact the SIP was first introduced to cater towards "*[MSCs] which have been severely impacted by COVI-19*"[23] and was only available for six months[24] (which was later extended to 5 years[25]) created an impression that SIP was more of an ad hoc measure to meet practical necessity.

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[18] 10 March 2017, Second Reading Speech By Senior Minister of State, Ministry of Finance & Ministry of Law, Indranee Rajah SC, on the Companies (Amendment) Bill §4 < https://www.mlaw.gov.sg/news/parliamentary-speeches/second-reading-speech-by-senior-minister-of-state--ministry-of-f/> Accessed on 20 February 2024
[19] 1 October 2018, Second Reading Speech By Senior Minister of State for Law, Mr. Edwin Tong, on the Insolvency, Restructuring and Dissolution Bill §5(b) < https://www.mlaw.gov.sg/news/parliamentary-speeches/second-reading-speech-sms-edwin-tong-insolvency-omnibus-bill/> Accessed on 19 February 2024
[20] Ibid, §2
[21] Ibid, §38
[22] 28 January 2021, Financially Distressed Micro and Small Companies May Apply for Simplified Insolvency Programme From 29 January 2021 < https://www.mlaw.gov.sg/news/press-releases/simplified-insolvency-programme-commences/> Accessed on 20 February 2024
[23] Ibid, §1
[24] Ibid, §3
[25] 22 January 2024, Extension of Application Period for Simplified Insolvency Programme, §4 <https://www.mlaw.gov.sg/news/press-releases/extension-application-period-simplified-insolvency-programme-to-2026/#:~:text=The%20SIP%20was%20introduced%20on,and%20lower%20cost%20insolvency%20process.> Accessed on 20 February 2024

A3. Legislative Intents in Cayman

13. Cayman's Companies Act 2021 is the relevant legislation in Cayman, which introduced the concept of a restructuring officer and moratorium (more in Section B).

14. Unfortunately, little is publicly available when it comes to the legislative intents behind the Companies Act 2021[26]. When that Act was passed, the Minister for Financial Services and Commerce, Hon. André M. Ebanks, remarked that "*there has been a lot of regulatory legislation coming at the [financial services] industry from all over the place [...] what we need to do is get back to the strategy [...] where we had a balance of the regulatory and commercial activity legislation so that the industry gets a bit of both*"[27] as an allusion to the Companies 2021 Act.[28] This suggests that the new features in that Act were perhaps primarily aimed at keeping Cayman in line with the international trends and standards, but not necessarily shaking up its status quo as a creditor-friendly jurisdiction. The fact that little promotion materials and/or practice notes are made available and there are only relatively restrained number of restructuring features[29] introduced in the Companies 2021 Act also support this line of interpretation.

B. THE NOTABLE FEATURES OF THE RESPECTIVE REGIMES

15. By now this paper has explained the balance between liquidation and restructuring goals in Cayman and Singapore. Section B will outline the salient features of their liquidation and restructuring proceedings.

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[26] Despite attempts at examining the (1) Memorandum of Objects and Reasons of the Companies (Amendment) Bill, 2021 <https://legislation.gov.ky/cms/images/LEGISLATION/BILLS/2021/2021-0007/CompaniesAmendmentBill2021.pdf> Accessed on 21 February 2024; (2) Hansard Reports of Cayman's House of Parliament <https://parliament.ky/hansard/house-meetings/> Accessed on 20 February 2024 ; (3) website and publications by the Cayman's Ministry of Finance & Economic Development which is the relevant department which introduced the Companies (Amendment) Bill 2021 <https://www.gov.ky/finance/> Accessed on 21 February 2024

[27] Parliament of the Cayman Islands, Official Hansard Report, Second Meeting of the 2021/2022 Session Forth Sitting, p.10 (supra)

[28] Ibid, p.10

[29] 25 October 2021 Media Release, Companies Act Amendments Published <https://www.mfs.ky/news/companies-act-amendments-published/ > Accessed on 21 February 2024

B1. Singapore

16. In Singapore, corporate insolvencies comprise mainly (1) receivership; (2) judicial management / scheme of arrangement; and (3) liquidation[30].

17. Receivership is a remedy exclusive for secured creditors and will not be discussed here for its lesser relevance to the topic.

Judicial Management / Scheme of Arrangement

18. As to judicial management[31] and scheme of arrangement[32], both are procedures related to company rescue.

    (1) Scheme of arrangement always operates under the supervision of the debtor company's management[33]; whereas judicial management is supervised by an external judicial manager[34] (section 91(3)(a) IRDA); and

    (2) Scheme of arrangement requires an arrangement between the debtor company and its creditors (section 64 of IRDA); whereas judicial management does not require such consensus and could be implemented by the Court on the application of either the company or any of its creditor as long as the conditions under section 90 of IRDA are fulfilled[35] (though section 94 of IRDA

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[30] Clifford Chance, A Guide to Asia Pacific Restructuring and Insolvency Procedures, p.109 <https://www.cliffordchance.com/content/dam/cliffordchance/briefings/2013/08/a-guide-to-asia-pacific-restructuring-and-insolvency-procedures.pdf> Accessed on 21 February 2024

[31] Part 7 of the IRDA

[32] Part 5 of the IRDA

[33] Gurrea-Martínez, the Myth of Debtor-Friendly or Creditor-Friendly Insolvency Systems: Evidence from a New Global Insolvency Index, Singapore Management University Yong Pung How School of Law Research Paper 4/2023, p.11

[34] 31 March 2022 (Last Update), Singapore Legal Advice, <https://singaporelegaladvice.com/law-articles/judicial-management#:~:text=However%2C%20the%20key%20difference%20between,an%20external%20judicial%20manager%20instead.> Accessed on 22 February 2024

[35] That the company is, or is likely to become, unable to pay its debts; and there is reasonable probability of rehabilitating the company or of preserving all or part of its business as a going concern, or that the interests of creditors would be better served otherwise than by resorting to a winding up

also permits the company to seek judicial management by resolution of creditors instead of a court order).

19. Notably, what sets Singapore apart in its emphasis on restructuring (over liquidation) are the following major features:-

(1) Cross-class cram down available for scheme of arrangements (section 70 of IRDA): which allows Singaporean Court to impose reorganisation plan on dissenting classes of creditors[36] provided that 75% by value and 50% in number of all creditors in aggregate (all classes of creditors) voted in favor of the scheme and the Court is satisfied that the scheme does not unfairly distribute between classes[37];

(2) Automatic moratorium with worldwide effect for both scheme of arrangements[38] and judicial management[39], with the possibility of being extended. Notably, in respect of scheme of arrangement, the IRDA also provides for moratorium extended to a company's holding company and subsidiaries[40] (section 65 of IRDA)[41];

(3) Restriction of ipso facto clauses (which permit termination of contracts as a result of the commencement of reorganisation procedure) in contracts (section

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[36] 23 November 2023 (Last Update), Chambers and Partners, Insolvency 2023, Singapore, <https://practiceguides.chambers.com/practice-guides/insolvency-2023/singapore#:~:text=State%20of%20the%20Restructuring%20Market&text=In%202022%2C%20there%20were%20257,ultimately%20wound%20up%20in%202022> Accessed on 22 February 2024

[37] July 2017, Norton Rose Fulbright, Singapore – the new jurisdiction of choice for cross-border restructuring? <https://www.nortonrosefulbright.com/zh-hk/knowledge/publications/217d13aa/singapore---the-new-jurisdiction-of-choice-for-cross-border-restructuring> Accessed on 22 February 2024

[38] For scheme of arrangements, the period of moratorium is "30 days after the date on which [scheme of arrangement's] application is made" (s.64(14) IRDA)

[39] For judicial management, the period of moratorium arises and ends with the making of judicial order or the dismissal of the application (s.95(4) IRDA)

[40] Legal 500, Singapore: Restructuring & Insolvency, <https://www.legal500.com/guides/chapter/singapore-restructuring-insolvency/#:~:text=It%20is%20possible%20for%20a,an%20application%20for%20judicial%20management.> Accessed on 23 February 2024

[41] Chambers and Partners Insolvency 2023 <https://practiceguides.chambers.com/practice-guides/insolvency-2023/singapore#:~:text=State%20of%20the%20Restructuring%20Market&text=In%202022%2C%20there%20were%20257,ultimately%20wound%20up%20in%202022>

440 of IRDA), which is applicable to both scheme of arrangement and judicial management;

(4) Super-priority status for creditors providing new financing to debtor companies subject to a restructuring procedure for both scheme of arrangements (section 67 of IRDA) and judicial managements (section 101 of IRDA), which allow these financiers to rank above secured creditors (provided several requirements are met[42]); and

(5) Secured creditors opposing the judicial management will need to show the judicial management order will cause him prejudice disproportionately greater than that caused to unsecured creditors (section 916(b) of IRDA).

20. In view of the above, the features in the Singaporean restructuring arena seem to support its reputation of being a debtor-friendly jurisdiction. One article even opines that "*Singapore has managed to put in place one of the most sophisticated restructuring frameworks existing in the world*".[43]

Liquidation

21. According to the Ministry of Law of Singapore, liquidation is described as "*a process where the company's assets are seized and realized, with the resulting proceedings used to pay off its debts and liabilities*".[44]

22. Common procedures in Singaporean liquidations include (1) members' voluntary winding-up; (2) creditor's voluntary winding-up; and (3) compulsory winding-up by

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[42] Order for priorities for rescue financiers will only be granted if the debtor company would not otherwise be able to obtain financing unless super-priority is granted — See Ajindepal Singh and Adriel Chioh 'Rescue Financing in Singapore: Navigating Uncharted Waters' [2020] Singapore Academy of Law Practitioner

[43] Gurrea-Martínez, Ooi, Bond University, Revenue Law Journal, Volume 26, 2020, The Tax Treatment of Haircuts in Financial Reorganizations p.6

[44] Singapore Ministry of Law, Insolvency Office, About Liquidation or Winding Up <https://io.mlaw.gov.sg/corporate-insolvency/about-liquidation-or-winding-up/#:~:text=The%20directors%20of%20the%20Company,file%20a%20declaration%20of%20solvency.&text=If%20the%20company%20is%20not,winding%20up%20of%20the%20company.> Accessed on 27 February 2024

the Court.[45] In the interest of space, this paper will not delve into great length for they are fairly standard procedures.

23. As mentioned in Section A, SIP is available as a speedier and more cost-effective alternative for MSCs. The difference between SWUP and normal liquidation proceedings is that SWUP eliminates the need for distressed companies to make applications to the Court. Rather, the applicant company begins its voluntary liquidation process by applying to the Official Receiver, who would serve as a liquidator[46]. The SIP promotes easier access to insolvency procedures.

24. Another noteworthy highlight regarding Singapore's liquidation proceedings is its adoption of the UNCITRAL Model Law on Cross-border Insolvency (the "**Model Law**") since Companies (Amendment) Act 2017 (which is now integrated into Schedule 3 of the IRDA).

25. Prior to the implementation of the Model Law, Singapore depended on common law principles to facilitate recognition and assistance of insolvency proceedings.[47] After the Model Law was introduced into Singapore, the Model Law would displace the common law doctrine except in cases where the Model Law is inapplicable.[48]

26. The most celebrated feature in the Model Law includes its provisions which give foreign creditors (irrespective whether foreign creditors' jurisdictions adopt the Model Law) the same rights as local creditors to participate in the insolvency process.[49] Further, the Model Law would be useful in cases of foreign assistance for an insolvency proceeding taking place in the enacting State, such as Australia, BVI,

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[45] Ibid
[46] Ministry of Law, SIP FAQ, §23 <> Accessed on 22 February 2024
[47] 15 August 2016, Herbert Smith Freehills, Recognition of foreign insolvencies at common law: Singapore sets COMI precedent < https://hsfnotes.com/asiadisputes/2016/08/15/recognition-of-foreign-insolvencies-at-common-law-singapore-sets-comi-precedent/> Accessed on 22 February 2024
[48] Re Tantleff, Alan [2022] SGHC 147, §84
[49] January 2021, Norton Rose Fulbright, Cross-border insolvency in Hong Kong: Common law limitations and how the Model Law could drive foreign investment and economic growth <https://www.nortonrosefulbright.com/en-hk/knowledge/publications/80831390/cross-border-insolvency-in-hong-kong> Accessed on 22 February 2024

USA, Japan, etc[50], which could transcend the limitation of common law doctrine (under which the assisting court cannot enable foreign insolvency practitioners to do something which would not be available for those appointed under the laws of the assisting jurisdiction[51]).

27. It should again be noted that the Model Law also equally assists the restructuring front — see for example *Ascentra Holdings, Inc and Others v SPGK Pte Ltd* [2023] SGCA 32, where it was held by the Singaporean Court of Appeal that solvent official liquidations can be recognized as foreign main proceedings under the Model Law. Therefore, the implementation of the Model Law does not swing Singapore's emphasis on restructuring back to liquidation.

B2. Cayman

28. The principal insolvency procedures under Cayman comprise (1) receivership; (2) scheme of arrangement without restructuring officer; (3) restructuring by scheme of arrangement under the supervision of a restructuring officer ("**RO**"); and (4) liquidation[52]. Again, this paper will not address receivership for its lesser relevance to the topic.

Scheme of arrangement

29. Scheme of arrangement which is not in tandem with provisional liquidation has been available before the Companies (Amendment) Act 2021. However, it is generally not attractive from both the debtors (since there is no protection from creditors' action[53]), and creditors (due to insufficient control over the company's restructuring progress).

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[50] 16 March 2017, United Nations, Singapore enacts legislation implementing UNCITRAL Model Law on Cross-Border Insolvency <https://unis.unvienna.org/unis/en/pressrels/2017/unisl243.html> Accessed on 22 February 2024
[51] Singularis Holdings Limited v PricewaterhouseCoopers [2014]) UKPC 36
[52] 23 November 2023 (Last Update), Chambers and Partners, Insolvency 2023, Cayman Island <https://practiceguides.chambers.com/practice-guides/comparison/747/12120/19186-19187-19188-19189-19190-19191-19192-19193-19194-19195-19196> Accessed on 22 February 2024
[53] January 2022, Allen & Overy, Restructuring across borders, Cayman Island, Corporate restructuring and insolvency procedures

30. In a sense, a standalone scheme of arrangement in Cayman remains unattractive since the new moratorium feature only applies to scheme of arrangements under the supervision of a RO (more elaborated below).

31. However, a slight progression is the abolishment of the headcount test for members' scheme of arrangement (section 86 of the Companies Act 2023), meaning that the votes of 75% in value of the members or class of members (without also requiring 75% in number) will be a binding scheme of arrangement (sections 70(3)(a) and (b) IRDA).

Restructuring by scheme of arrangement under supervision of a RO

32. Before the introduction of the Companies (Amendment) Act 2021, another common way to conduct restructuring was scheme of arrangement in tandem with provisional liquidation. However, there are limitations. First, it came with the negative stigma associated with the name of "liquidation". Second, the fact that directors might not present a winding-up petition to the Cayman court without its members' resolution or an express power in its articles of association[54] (where winding-up petition is a prerequisite for provisional liquidation[55]) was an obstacle for a timely restructuring.

33. Section 91C of Cayman Companies Act 2023 now permits directors to present an application for appointment of RO without a resolution of its members or an express power in its articles of association. Further, there is now no requirement for a winding-up petition to be filed before an application for appointment of a RO.

34. The notable features under the Companies Act 2023 regarding RO restructuring is as follows:-

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[54] China Shanshui Cement Group Ltd 2015 (2) CILR 255

[55] August 2022, Mourant, Cayman Islands' new restructuring officer regime is now in force <https://www.mourant.com/file-library/media---2022/cayman-islands-new-restructuring-officer-regime-is-now-in-force.pdf> Accessed on 22 February 2024

(1) Petitioner for the appointment of RO must show that (i) the Company is or is likely to become unable to pay its debts, and (ii) it intends to present a compromise or arrangement to its creditors (section 91B)[56];

(2) The RO must be a qualified insolvency practitioner (section 91D);

(3) Subject to the terms of Court's order, directors under supervision of RO may be able to remain in office[57] (section 91B (5)(b)), but the RO or a creditor may apply to the Court for a variation or discharge their functions (section 91E);

(4) Similarly, a RO may be removed from office and replaced by an alternative RO by the Court on application of the company's directors or its creditors (section 91F); and

(5) There will be an automatic worldwide moratorium upon presentation of the petition for appointment of RO up until RO has been discharged (section 91G). However, such moratorium does not impact the ability of a secured creditor to enforce security (section 91H).[58]

35. Referring to the variables mentioned in §7 above, Cayman remains as a creditor-friendly jurisdiction, since (1) secured creditors retain their ability to enforce their security interest during restructuring, (2) there is no cross-class cram down, (3) there are no statutory restrictions to ipso facto clauses, (4) restructuring will be undergone by an insolvency practitioner (an RO) instead of by the debtor company, and (5) creditors maintain their monitoring function over the conduct of the RO.

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[56] 11 October 2023, Ogier, Cayman Restructuring Update: Decision of the Grand Court on 4th October < https://www.ogier.com/news-and-insights/insights/cayman-restructuring-update-decision-of-the-grand-court-on-4th-october/> Accessed on 26 February 2024

[57] Mourant, Cayman Islands' new restructuring officer regime is now in force (supra)

[58] 14 April 2023, Checking the Lifeboat- Cayman Islands Consensual Restructuring Strategies, Mourant <https://www.mourant.com/news-and-views/updates/updates-2023/checking-the-lifeboat---cayman-islands-consensual-restructuring-strategies.aspx> Accessed on 21 February 2024

Liquidation

36. On the liquidation front, common procedures in Cayman liquidations include (1) compulsory order of the court (sections 92 to 103 of Companies Act 2023); (2) voluntary winding up (sections 116 to 130 of Companies Act 2023); and (3) winding up subject to supervision of the Court (sections 131 to 133 of Companies Act 2023).

37. In the interest of space, this paper will not delve into great length for the first way of winding-up as it is fairly standard.

38. What is noteworthy is in respect of second and third ways of winding up as they demonstrate Cayman Court's supervisory role in the liquidation process. Under section 124 of the Companies Act 2023, a company which is wound up voluntarily must apply for a supervision order from the court unless the company is solvent. Further, under section 131 of the Companies Act 2023, even if the company who has voluntarily wound up itself is solvent, the liquidator or its creditors may apply to the Court for a supervision order.

39. The purpose of the Court's supervision is to facilitate a more "*effective, economic or expeditious liquidation in the interest of... creditors*" (section 131(b) Companies Act 2023).

40. Another newly introduced feature in Companies Amendment Act 2023 is its provision of additional powers for directors of a company (which was incorporated after the commencement of 31 August 2022) to present a winding up petition on the company's behalf without the sanction of a special resolution at a general meeting, unless these rights are removed or modified by the company's articles (see the combined effect of sections 92(d), 93(d), 93(2A), and 93(2B) of the Companies Act 2023).

C. COMPARISON

41. After we have discussed the features of the liquidation and restructuring proceedings of Singapore and Cayman, we now conduct a comparison analysis.

42. In respect of restructuring, firstly, in terms of the degree of control exercisable by the debtor company's directors during a restructuring, although Cayman RO could co-exist with the company's directors, the Singapore's restructuring regime allows the directors to keep their office in a scheme of arrangement (i.e. debtor-in-possession). Perhaps this is why the commentaries note that the debtor-in-possession scheme of arrangement in Singapore as "*unprecedented*".[59]

43. Secondly, Cayman provides that moratorium does not apply to secured creditors, meaning that secured creditors are still entitled to enforce their securities. In contrast, the moratorium granted by Singaporean courts will apply equally to secured creditors, which was once suggested to be "*too debtor-friendly*".[60] This also accords with the first to fourth principles of "Statement of Principles for a Global Approach to Multi-Creditor Workouts II" published by INSOL International.

44. Thirdly, Singapore offers a statutory cram down mechanism which allows the majority of creditors to bind those unyielding creditors of other classes in a scheme of arrangement, which the Cayman counterpart does not allow the same.

45. Fourthly, super priority financing is a feature available in Singapore, through which financiers could rank even above secured creditors, which would in turn offer incentive for restructuring efforts. Although Cayman does not offer super priority financing, the laws permit the default priority position to be modified by contract, meaning that intercreditor agreements may be a possible option to achieve like-

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[60] 23 July 2023, Ashurst, Singapore's insolvency and restructuring regime, in the eyes of practitioners: Opinion <https://www.ashurst.com/en/insights/singapores-insolvency-and-restructuring-regime-in-the-eyes-of-practitioners-opinion/> Accessed on 23 February 2024

effects.[61]

46. As could be seen above, although the recent change of the legislations in Cayman seems to have provided further measures in support, the change in the Singaporean counterpart has gone further to render itself an international restructuring hub, thereby achieving its restructuring goals as advocated by the lawmakers.[62]

47. We now turn to compare the respective liquidation aspects of the two jurisdictions.

48. Firstly, in terms of the legal requirement for companies to commence insolvency proceedings, although both Singapore and Cayman impose no such obligation[63], directors of Singapore companies are subject to personal liabilities if found to be guilty of "wrongful trading" (i.e. where the company incurs debts or liabilities without reasonable prospect of meeting them in full when it is insolvent or that results in it becoming insolvent)[64]; whereas Cayman merely imposes general fiduciary duty on directors towards creditors when the company becomes insolvent.

49. Secondly, in respect of the power to seek a winding up when the restructuring efforts have gone in vain, the judicial manager in Singapore may apply to wind up the company (section 124(1)(h) of IRDA), but the RO in Cayman does not enjoy such power. This aspect reveals that that Singapore provides the restructuring officers with the necessary powers to handle a situation where restructuring is no longer warranted.

50. Thirdly, Singapore now adopts the Model Law (but Cayman does not), which facilitates various aspects of the administration of an insolvency company, including but not limited to giving foreign creditors equal participation right as local creditors and providing foreign assistance for insolvency proceedings in other enacting states,

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[61] Checking the Lifeboat- Cayman Islands Consensual Restructuring Strategies, Mourant (supra)

[63] Chambers and Partners, Insolvency 2023, Cayman <https://practiceguides.chambers.com/practice-guides/insolvency-2023/cayman-islands/trends-and-developments> Accessed on 3 February 2024

[64] Ibid

which allows Singapore to become a jurisdiction being "user-friendly" for insolvency practitioners.

51. Overall, although the recent development of the respective liquidation regimes in Singapore and Cayman does not make any breakthrough, various aspects demonstrate that Singapore offers a more comprehensive environment in support of liquidation should that become necessary.

D. CONCLUSION

52. To conclude, notwithstanding that measures are put in place to facilitate liquidation, Singapore warrants its reputation as a debtor-friendly jurisdiction, which naturally emphasises more on its restructuring goals and proceedings than liquidation. On the other hand, the restructuring in Cayman is relatively modest. Though this is not to say that Cayman makes no genuine effort for restructuring to take place, as seen in the abolishment of the headcount test. All in all, given the less impactful restructuring measures in place, this paper views Cayman's equilibrium on liquidation and restructuring as more balanced.

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