



Court Extends Timelines to File US\$20 Million Proof of Debt

Recently in *The Oriental Insurance Co Ltd v Reliance National Asia Re Pte Ltd* [2008] SGCA 18, the Singapore Court of Appeal held that a company that failed to file its proof of debt in time under a scheme of arrangement could be granted an extension of time for filing.

The case arose when The Oriental Insurance Co Ltd ("Oriental"), the largest creditor of Reliance National Asia Re Pte Ltd ("Reliance"), missed the deadline for filing its proof of debt for the US\$20 million debt owed to it by Reliance. The scheme, which was a solvent scheme of arrangement, would have seen Oriental receive full payment for the debt. As a result of its oversight, it could have lost the right to claim the full sum if the court held that it did not have power to extend time for filing. This was indeed what the Singapore High Court decided. Not surprisingly, Oriental appealed to the Singapore Court of Appeal.

This Update takes a look at the Court's decision.

Legal Background

In a scheme of arrangement, a company reaches an agreement with its creditors for the satisfaction of their claims. Usually, this procedure is used where the company is unable to pay its debts as and when they fall due. It may, however, also be used—as was the case here—where the company is solvent.

Overview of procedure for schemes of arrangement

The procedure for obtaining a binding scheme of arrangement is set out in section 210 of the Companies Act. In brief, the procedure involves the following steps:

- Once the proposed scheme document has been prepared, an application is made to court for permission to convene a meeting of the company's creditors for the purpose of considering and voting on the scheme. At the hearing of the application, the court has a discretion as to whether to order a meeting of creditors.

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Creditors vote whether to accept a scheme

- If the court orders that a meeting be convened, the creditors of the company will vote on the scheme. The scheme can only proceed if it finds favour with the requisite majority of creditors voting at the meeting convened to vote on the scheme: More than 50% in number representing at least 75% in value of the creditors present and voting at the meeting must vote in favour of the scheme.

Scheme is subject to court approval

- If the scheme is approved by the requisite majority, a further application must be made to the court for approval of the scheme. The court has a wide discretion to approve a scheme, and does not merely 'rubber stamp' the views of the majority creditors.

Once approved, scheme binds all creditors

- If the requisite majority of creditors vote in favour of the scheme, and the approval of the court is obtained, the scheme of arrangement will bind all creditors affected by the scheme, including dissenting creditors. Section 210(3) provides, "... the compromise or arrangement shall, if approved by order of the Court, be binding on all the creditors..."

The Court's Decision

English courts held that courts cannot extend time

One of the difficulties facing Oriental was a line of English cases which had held that the court had no power to extend time once it had approved a scheme of arrangement. These cases regarded a scheme of arrangement as a statutory contract between the debtor-company and its various creditors. As a contract, once it had been approved, the court could not make any substantive alterations to its terms, such as granting an extension of time. This line of cases was accepted by the High Court in this case.

Australian courts took the opposite view

On the other hand, Australian cases had adopted the opposite approach. The Australian courts considered the English view, but rejected it, holding that a scheme of arrangement took effect as an order of court. As a court order, it could always be varied by the court any time justice required. This approach was the one preferred by the Court of Appeal.

CA preferred the Australian view

It noted that such an approach would avoid the unfairness or injustice which may potentially be caused to an innocent creditor who is not to

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be blamed for its failure to file its proof of debt in time. It also held that this approach would avoid a strained construction of the plain wording of section 210(3) of the Companies Act.

When the Court Will Extend Time

*Factors considered
when deciding
whether to extend time*

Having decided that it had the jurisdiction to grant an extension of time for a creditor to file its proof of debt (or extending other time limits prescribed in a scheme of arrangement), the Court then considered when it should exercise its discretion. In this respect, it held that the two main factors it would consider would be:

- whether there is any prejudice to the company which is the subject of the scheme of arrangement, the other parties to the scheme, or the party who seeks the extension of time; and
- the reason behind the failure of the party seeking the extension of time to comply with the timeline originally stipulated.

*Circumstances when
prejudice will arise*

In considering whether prejudice will be caused, the court will consider the entire circumstances of the case, notably:

- whether any distribution has been made under the scheme;
- whether allowing the application for extension of time will inconvenience the other creditors or substantially affect the dividends that they can expect to receive;
- whether the order for extension of time can be framed to avoid any potential prejudice to other creditors; and
- how much the creditor seeking the extension of time stands to lose if no extension is granted.

This list of factors is not exhaustive and the court will always consider the circumstances of the case as a whole in deciding if prejudice would be caused to any of the interested parties. However, the Court emphasised that the overriding consideration remains that of prejudice.

Application to the Facts

The Court held that Oriental should be granted an extension of time

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as doing so would cause no prejudice to the company or the other creditors, but that not doing so would be gravely prejudicial to Oriental.

No prejudice here on the facts

In coming to this decision, the Court took note of the following facts:

- The scheme in this case was a solvent one as Reliance had sufficient assets to pay all the scheme creditors, including Oriental, in full.
- Oriental was, from the very beginning, a creditor known to Reliance, and Reliance had always been prepared to meet Oriental's claim.
- Oriental was only two months late in filing its proof of debt. Furthermore, when it first notified Reliance that it wished to file its proof of debt out of time, there was still a good six months before the targeted payment date under the scheme.
- The only prejudice that could potentially arise would be caused to Oriental if its application for an extension of time were not granted. Oriental's claim was about US\$20 million, and a refusal of its application for an extension of time would hand to the shareholders of Reliance an unmerited windfall. Oriental would be left with virtually nothing, although it had voted in favour of the scheme and was all along a creditor known to Reliance to have an apparently genuine claim.

Oriental made mistake but acted promptly to rectify it

Although the Court noted that Oriental was not blameless in failing to file its proof of debt in time, the case was one of inadvertent oversight. In this respect, the Court noted that, upon learning of its failure in this regard two months after the deadline for filing its proof of debt had passed, Oriental immediately wrote to notify Reliance of its wish to submit its claim, and, at that time, there was still approximately six months before the targeted payment date under the scheme.

Conclusion

The Court's decision usefully demonstrates that it will not be pedantic in its application of timelines where the justice of the case requires. It is not, however, *carte blanche* for creditors to adopt a *laissez faire*

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attitude to the timelines under schemes, and it remains advisable to exercise prudence and promptitude in adhering to specified deadlines.

If you would like information on this or any other area relating to corporate insolvency, you may wish to contact the lawyer at WongPartnership LLP that you normally deal with or contact the following partners from the Banking & Insolvency Practice:

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