Insolvency law review: Report out next quarter

Cross-border insolvency among issues under study

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A COMMITTEE commissioned by Law Minister K. Shanmugam to review Singapore’s laws on insolvency – or the inability to pay debts – is slated to submit its report in the next quarter.

Among the issues under study is one on how to deal with cross-border insolvency, said a Law Ministry spokesman.

Such insolvencies involve multinational companies with assets in several countries. Affected parties in each country will lay claims to the company’s assets and will want to have a say in how the insolvency proceedings are conducted.

Different countries have different insolvency laws, leading to a problem of mediating between the conflicting claims. International insolvency law is meant to ensure such disputes are settled in a fair and efficient manner to benefit all creditors and stakeholders of the company.

The ministry was responding to queries from The Straits Times about a law professor’s article in the current issue of the Singapore Academy of Law Journal calling for reform of the country’s international insolvency law.

National University of Singapore assistant professor of law Wee Meng Seng said in the article that Singapore’s international insolvency law is “underdeveloped and out of line with recent international developments”.

He attributed this “unsatisfactory state of affairs” to the existing 377(3)(c) provision of the Companies Act that, in his view, needed to be repealed.

“It ring-fences the Singaporean assets of a foreign company that is registered under the Act to pay debts and liabilities incurred in Singapore by the foreign company before the balance, if any, is transmitted to the liquidator of the foreign company for the place where it was formed or incorporated.”

He suggested the ring-fencing law be replaced by the common law developed through precedents in cases decided over the years.

But the move should not overtake the intent of any policy that protects certain classes in specific industries such as bank depositors and policyholders, he said.

He added the eventual aim should be to adopt the United Nations’ Model Law on Cross-Border Insolvency that has already been ratified by 18 countries, including global economic heavyweights like the United States, Japan and Britain.

Under this scheme, when a court case in one country is recognised as the main case, a moratorium kicks in automatically for the other participating states to preserve the debtor’s assets and prevent their removal across borders.

The debtor’s assets outside the state where the main case is heard are protected from being seized by local creditors, subject to exceptions.

Prof Wee said the current “territorial approach” ran counter to the recent emphasis to coordinate and cooperate on measures by various countries to reform their international insolvency laws.

He added the issue had become more acute as Singapore integrated closely with the global economy and prepared to cope with any international insolvency that might arise.

But other lawyers here said the ring-fencing was meant to protect local creditors who stood to get the first bite of any asset distribution in an insolvency.

If the protection were to be removed, it would require reciprocity from countries in the region like Malaysia, Indonesia and China, which does not exist now.

The Law Ministry said the Insolvency Law Review Committee, which was commissioned in December 2010, is chaired by Senior Counsel Lee Eng Beng.

It comprises insolvency practitioners, academics and representatives of various stakeholders involved in insolvency matters in Singapore.

It is also supported by an advisory panel of foreign experts.

“The Law Ministry recognises that as the global economy becomes increasingly integrated, and companies acquire a presence in more than one jurisdiction, issues of cross-border insolvency, and the law regulating how the assets of an insolvent multinational company are to be dealt with, become increasingly relevant,” said a Law Ministry spokesman.

The review committee is expected to issue the report in the second quarter for public consultation, after which the ministry will consider the report and feedback, she added.

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