IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2025] SGHC 6

Originating Application No 1257 of 2024

In the matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Dasin Retail Trust Management Pte Ltd

Dasin Retail Trust
Management Pte Ltd

… *Applicant*

JUDGMENT

[Companies — Schemes of arrangement — Trustee-manager of business trust seeking moratorium for intended scheme of arrangement — Whether trustee-manager may propose scheme of arrangement in respect of debts incurred in capacity as trustee-manager — Whether requirements for grant of moratorium satisfied — Terms of moratorium order — Section 64 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed)]

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Kristy Tan JC:

Introduction

1 HC/OA 1257/2024 ("OA 1257") is an application by Dasin Retail Trust Management Pte Ltd ("DRTM") for a moratorium pursuant to s 64 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA").

Background

DRTM

2 DRTM is a company incorporated in Singapore. It is the trustee-manager of Dasin Retail Trust ("DRT"). DRT is a business trust registered in Singapore under the Business Trusts Act 2004 (2020 Rev Ed) ("BTA") and listed on the Mainboard of the Singapore Exchange Securities Trading Limited ("SGX-ST").

It owns and operates, through various wholly-owned subsidiaries, various retail malls in China.[1]

3 DRTM's shares are held (a) directly and indirectly by Zhang Zhencheng ("ZZC") (approximately 30%) and (b) by New Harvest Investments Limited ("New Harvest") (approximately 70%), a wholly owned company of Sino-Ocean Capital Holding Limited ("Sino-Ocean Capital").[2] ZZC also holds, directly and indirectly through Aqua Wealth Holdings Limited ("Aqua Wealth") and Bounty Way Investments Limited ("Bounty Way"), approximately 42.99% of the units in DRT. Sino-Ocean Capital holds (directly and indirectly) approximately 11.99% and DRTM holds approximately 4.54% of the units in DRT.[3]

DRTM's liabilities

4 In 2017, in connection with the acquisition of DRT's initial portfolio of four malls in China, (a) DRTM (in its capacity as trustee-manager of DRT), as borrower, contracted with various banks in Singapore and Hong Kong for syndicated term loan facilities (the "IPO Offshore Facility") and (b) DRTM's indirect Chinese subsidiary (held as part of DRT), Zhongshan Yuanxin Commercial Property Management Co, Ltd ("Zhongshan Yuanxin"), as borrower, contracted with various banks in China for syndicated term loan facilities (the "IPO Onshore Facility", and together with the IPO Offshore Facility, the "IPO Facilities").[4]

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1 1st Affidavit of Tan Hock Sun Sonny filed on behalf of DRTM on 2 December 2024 ("Sonny's 1st Affidavit") at paras 9–11.

2 Sonny's 1st Affidavit at para 15.

3 Sonny's 1st Affidavit at para 18.

4 Sonny's 1st Affidavit at para 25 read with the Applicant's Skeletal Submissions dated 23 December 2024 ("DRTM's Submissions") at paras 3–4.

5 In 2019, in connection with DRT's acquisition of another mall in China, (a) DRTM (in its capacity as trustee-manager of DRT), as borrower, contracted with various banks in Singapore and Macau for syndicated term loan facilities (the "Doumen Offshore Facility") and (b) DRTM's indirect Chinese subsidiary (held as part of DRT), Zhuhai Xinmingyang Investment Co, Ltd, as borrower, contracted with a bank in China for a term loan facility (the "Doumen Onshore Facility", and together with the Doumen Offshore Facility, the "Doumen Facilities").[5]

6 In 2020, in connection with DRT's acquisition of another two malls in China, (a) DRTM (in its capacity as trustee-manager of DRT), as borrower, contracted with various banks in Singapore, Hong Kong and Macau for syndicated term loan facilities (the "Shunde Offshore Facility") and (b) DRTM's indirect Chinese subsidiary (held as part of DRT), Foshan Dasin Commercial Management Co, Ltd, as borrower, contracted with various banks in China for syndicated term loan facilities (the "Shunde Onshore Facility", and together with the Shunde Offshore Facility, the "Shunde Facilities").[6]

7 The IPO Offshore Facility, Doumen Offshore Facility and Shunde Offshore Facility will be referred to collectively as the "Offshore Facilities" and the participating banks thereunder will be referred to collectively as the "Offshore Lenders". The IPO Onshore Facility, Doumen Onshore Facility and Shunde Onshore Facility will be referred to collectively as the "Onshore Facilities" and the participating banks thereunder will be referred to collectively as the "Onshore Lenders".

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5 Sonny's 1st Affidavit at para 27 read with DRTM's Submissions at paras 3–4.

6 Sonny's 1st Affidavit at para 29 read with DRTM's Submissions at paras 3–4.

8 The Offshore Facilities are secured by, *inter alia*, first-ranking charges over the entire issued share capital of each of DRT's Singapore subsidiary companies and first-ranking pledges over the entire issued share capital of each of the Chinese property companies and rental management companies.[7] The Onshore Facilities are secured by, *inter alia*, legal mortgages over the relevant malls financed by each facility and pledges over the sales proceeds, rental income and receivables derived from the relevant properties.[8]

9 In respect of each set of corresponding offshore and onshore facilities, the relevant Offshore and Onshore Lenders entered into an Intercreditor Deed to govern, *inter alia*, repayment of the relevant Offshore Facilities and Onshore Facilities and when security can be taken and enforced.[9]

10 In 2021, DRTM (in its capacity as trustee-manager of DRT), as borrower, entered into an agreement with Luso International Banking Limited ("Luso Bank") for the grant of a loan facility (the "Luso Facility"). The Luso Facility is secured by a pledge of moneys by Zhongshan Yuanxin to Luso Bank.[10]

11 The Offshore Facilities, Onshore Facilities and Luso Facility are in default.[11] As at 30 June 2024, the outstandings (excluding interest) under:[12]

(a) the Offshore Facilities are:

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7 Sonny's 1st Affidavit at para 33.

8 Sonny's 1st Affidavit at para 32.

9 Sonny's 1st Affidavit at para 34.

10 Sonny's 1st Affidavit at paras 35–36.

11 DRTM's Submissions at para 5.

12 Sonny's 1st Affidavit at para 122.

(i) IPO Offshore Facility: approximately S$410.5m;

(ii) Doumen Offshore Facility: approximately S$103.2m;

(iii) Shunde Offshore Facility: approximately S$129.9m;

(b) the Onshore Facilities are:

(i) IPO Onshore Facility: approximately S$65.3m;

(ii) Doumen Offshore Facility: approximately S$89.6m;

(iii) Shunde Offshore Facility: approximately S$86.7m; and

(c) the Luso Facility are approximately US$13.1m (or S$17.8m).

12 DRTM has provided:

(a) a list of unsecured creditors for its liabilities incurred *qua* trustee-manager of DRT as at 30 June 2024, totalling approximately S$150.3m;[13] and

(b) a list of unsecured creditors for its personal liabilities as at 30 September 2024, totalling approximately S$4.4m.[14]

Both lists have been caveated by DRTM to be "subject to verification, dispute and adjudication", without any admission of liability and without conceding that all these liabilities will be part of the intended scheme.[15]

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13 Sonny's 1st Affidavit at para 124 and pp 1318–1320 (exh "THSS-1", Tab 25).

14 Sonny's 1st Affidavit at para 128 and pp 1362–1363 (exh "THSS-1", Tab 28).

15 DRTM's Submissions at para 55.

13 DRTM has no secured creditors in respect of its personal liabilities as at 30 September 2024.[16]

Disputes between DRTM and ZZC

14 The relationship between ZZC and Sino-Ocean Capital (respectively the ultimate minority and majority shareholders of DRTM) soured sometime in or around 2022. As this is not the occasion to resolve the disputes between the two camps, it is unnecessary to delve into the details of these disputes, save to state the following.

15 In December 2022, DRTM engaged FTI Consulting (Singapore) Pte Ltd ("FTI") as financial advisor to assist in the restructuring of the Offshore Facilities and Onshore Facilities.[17] According to ZZC, from 5 March 2023 to 5 March 2024, FTI, working with DRTM (but excluding ZZC), proposed various term sheets which were unacceptable to ZZC.[18] According to DRTM, its Board learned in February or March 2023 that its then-Chief Executive Officer ("CEO"), Wang Qiu, a long-time trusted employee of ZZC, was pursuing an alternative restructuring effort without the Board or FTI's knowledge, likely in furtherance of ZZC's objective to secure a restructuring favourable to him.[19] From around November 2023 to September 2024, ZZC made unsuccessful attempts to remove DRTM as the trustee-manager of DRT and to internalise the trustee-manager function of DRT.[20]

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16 Sonny's 1st Affidavit at para 127 read with 2nd Affidavit of Tan Hock Sun Sonny filed on behalf of DRTM on 19 December 2024 ("Sonny's 2nd Affidavit") at para 27.

17 Sonny's 1st Affidavit at para 60; ZZC, Aqua Wealth and Bounty Way's Written Submissions dated 23 December 2024 ("ZZC's Submissions") at para 29.

18 ZZC's Submissions at para 29.

19 Sonny's 1st Affidavit at paras 48(d) and 68.

20 Sonny's 1st Affidavit at paras 88–104.

16 In or around June 2024, DRTM commenced steps to gain operational control of two of the Chinese subsidiaries which own and/or operate the Doumen Metro Mall in China. The legal representative of these companies, Zhang Zhongming, is ZZC's nephew.[21] Efforts to change the legal representative of these companies have escalated to litigation in the Chinese courts, which is ongoing.[22] DRTM further intends to take steps to regain control of ten other Chinese subsidiaries.[23]

17 Winding up proceedings have been commenced by ZZC and his associates against DRTM:

(a) Wang Qiu commenced HC/CWU 57/2024 ("CWU 57"), which was stayed by consent pending the disposal of HC/OC 140/2024 ("OC 140") brought by DRTM against Wang Qiu in connection with the disputed debt in CWU 57.[24]

(b) Zhang Guiming, ZZC's nephew, commenced HC/CWU 55/2024 ("CWU 55"), which was stayed by consent pending the disposal of HC/OC 108/2024 ("OC 108") brought by DRTM against Zhang Guiming in connection with the disputed debt in CWU 55.[25]

(c) ZZC commenced HC/CWU 133/2024 ("CWU 133") on 22 May 2024.[26]

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21 Sonny's 1st Affidavit at para 12.

22 Sonny's 1st Affidavit at paras 74–84; Sonny's 2nd Affidavit at paras 43–57.

23 Sonny's 2nd Affidavit at para 58.

24 Sonny's 1st Affidavit at paras 106(b) and 107.

25 Sonny's 1st Affidavit at paras 106(a) and 107.

26 Sonny's 1st Affidavit at para 106(c).

18 ZZC filed CWU 133 to wind up DRTM based on his standing as its contributory.[27] The first hearing of CWU 133 was held on 21 August 2024 and adjourned to 6 September 2024 for ZZC to comply with the rules on advertising the application. On 6 September 2024, Malayan Banking Berhad, Singapore Branch ("Maybank Singapore"), the Facility Agent and Security Agent and an Offshore Lender under the IPO Offshore Facility,[28] sought an adjournment of CWU 133 as it wished to oppose the application. CWU 133 was adjourned to 19 November 2024.[29] On 12 November 2024, New Harvest filed an application to stay CWU 133 pursuant to s 6 of the International Arbitration Act 1994 (2020 Rev Ed).[30] CWU 133 was re-fixed to be heard with New Harvest's application on 3 December 2024.[31] On 2 December 2024, DRTM filed OA 1257. CWU 133 was accordingly stayed pursuant to s 64(8) of the IRDA.[32]

The application in OA 1257

19 In OA 1257, DRTM seeks (a) a six-month moratorium in terms mirroring ss 64(1)(*a*)–(*f*) of the IRDA ("Prayer 1"); (b) an order that the orders made under Prayer 1 "shall apply to any act of any person in Singapore or within the jurisdiction of the [c]ourt, whether the act takes place in Singapore or elsewhere" ("Prayer 2"); and (c) liberty for DRTM and any person affected by

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27 1st Affidavit of Zhang Zhencheng filed on behalf of ZZC, Aqua Wealth and Bounty Way on 23 December 2024 ("ZZC's 1st Affidavit") at para 147(a).

28 Maybank Singapore's Written Submissions in CWU 133 dated 26 November 2024 at para 2.

29 Sonny's 1st Affidavit at para 108.

30 ZZC's 1st Affidavit at para 147(g).

31 Wang Qiu, Cao Yong and Sun Shu's Written Submissions dated 23 December 2024 ("Wang's Submissions") at paras 20(a)–(e).

32 ZZC's 1st Affidavit at para 147(k).

the orders made to apply for further or other directions as may be necessary ("Prayer 3").

20 DRTM intends to carry out a global restructuring of the debts that have been incurred for and on behalf of DRT and its personal debts, via (a) a scheme of arrangement in Singapore which is intended to apply to DRTM's creditors, both in its capacity as trustee-manager of DRT and in its personal capacity, namely, the Offshore Lenders and "certain unsecured creditors",[33] and (b) a separate consensual restructuring of the Onshore Facilities with the Onshore Lenders in China.[34] A global restructuring effort involving the Onshore Lenders is required because, as a result of the defaults under the various facilities, rental income from the seven malls in China which are held in bank accounts with the Onshore Lenders are currently subject to strict capital controls and cannot be transferred from China to Singapore. This has severely impacted the cash flow of DRT and DRTM and impeded payment to the creditors of DRTM (both in its capacity as trustee-manager of DRT and in its personal capacity). The intended scheme is to facilitate the resumed flow of those funds offshore from China.[35] While the Onshore Lenders will not be included as scheme creditors under the intended scheme in Singapore as they are not creditors of DRTM, DRTM intends to secure their support for the restructuring separately and consensually.[36]

21 DRTM's Board (excluding ZZC), FTI, the Offshore and Onshore Lenders and Luso have been discussing a restructuring term sheet since early

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33 Sonny's 1st Affidavit at para 149(a); Sonny's 2nd Affidavit at para 24; DRTM's Submissions at paras 9 and 22.

34 DRTM's Submissions at para 7.

35 Sonny's 1st Affidavit at para 13; DRTM's Submissions at para 6.

36 Sonny's 2nd Affidavit at paras 33–34.

January 2023, which has undergone 16 drafts. The latest draft is dated 5 March 2024 (the "5 Mar 2024 Draft Term Sheet") and forms the basis for the intended scheme of arrangement.[37] The key terms of the intended scheme are:[38]

(a) The Offshore Lenders shall agree to a four-year restructuring period during which:

(i) DRTM shall seek to refinance all existing offshore loans before the end of the restructuring period and/or dispose of DRT's malls to repay the Offshore Facilities;

(ii) contractual interest will be serviced at the end of every quarter at a rate to be applied across the Offshore Facilities;

(iii) default / penalty interest under the existing finance documents will be waived if principal and contractual interest is paid in full at the end of the four-year restructuring period;

(iv) there shall be a waiver of any and all defaults of existing financial covenants and security ratio breaches;

(v) the financial covenants under the facility agreements shall be reset to mutually agreed, sustainable levels;

(vi) a monitoring accountant shall be appointed;

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37 Sonny's 1st Affidavit at para 73 and pp 1041–1048 (exh "THSS-1", Tab 17); DRTM's Submissions at para 10.

38 Sonny's 1st Affidavit at para 149; DRTM's Submissions at para 11.

(vii) the Offshore Lenders shall authorise payment of DRT and DRTM's basic expenses as well as interest under the Luso Facility;

(viii) the relevant lenders shall authorise a capital reduction exercise in respect of the IPO Facilities and the Doumen Facilities to facilitate the remittance of funds from China to the relevant offshore accounts;

(ix) a plan for the recovery of receivables in respect of the malls shall be implemented by DRTM subject to any proposed repayment terms being acceptable to the Offshore Lenders;

(x) there shall be an upfront partial repayment of the outstandings under the Offshore Facilities on a *pari passu* basis subject to available principal and/or interest repayment reserves; and

(xi) there shall be quarterly principal repayments to the Offshore Lenders on a *pari passu* basis, subject to available reserves.

(b) Subject to the requisite consent of the Onshore Lenders, DRTM shall procure, *inter alia*, the grant of second-ranking legal mortgages over DRT's malls in favour of the Offshore Lenders and Luso.

(c) The conditions precedent to the scheme of arrangement will include:

(i) approval of the scheme of arrangement under s 210 of the Companies Act 1967 (2020 Rev Ed) ("Companies Act") or s 71 of the IRDA;

(ii) lodgement of the order of court approving the scheme of arrangement with the Accounting and Corporate Regulatory Authority in accordance with s 210(5) of the Companies Act or s 71(10) of the IRDA;

(iii) no change in the current trustee-manager of DRT, *ie*, DRTM;

(iv) the provision of audited financial statements in respect of DRT to the Offshore Lenders;

(v) the provision of finalised valuation reports in respect of DRT's malls to the Offshore Lenders; and

(vi) the receipt of all authorisations, consents, clearances, permissions and approvals as are required by law, including any requirements under SGX-ST listing rules.

22 DRTM further intends to propose appropriate amendments to the Intercreditor Deeds (see [9] above) which will bind the Offshore Lenders via the intended scheme and the Onshore Lenders via a consensual restructuring agreement.[39]

23 At this point, DRTM has not articulated its intended proposal *vis-à-vis* the unsecured creditors of DRTM (both in its capacity as trustee-manager of DRT and in its personal capacity) beyond stating that "the scheme is intended

[39] Sonny's 1st Affidavit at para 150.

to pay [certain] unsecured creditors 100 cents to the dollar in a way that can be sustained once funds have been secured".[40] DRTM explains that it is presently unable to provide more details because the terms of any proposal will "depend on the extent to which DRTM is able to negotiate the release and upstreaming of available cash for the discharge of these creditors".[41] DRTM has also yet to determine which of the unsecured creditors it has listed (which include related parties) will be part of the intended scheme.

24 DRTM seeks the moratorium as it requires time and breathing room (in particular, from CWU 133) to work towards the intended scheme of arrangement with its creditors.[42]

The non-parties' positions

ZZC, Aqua Wealth and Bounty Way

25 ZZC, Aqua Wealth and Bounty Way oppose OA 1257. They raise five main objections. For convenience, I refer to the objections as ZZC's arguments.

26 First, ZZC argues that the intended scheme is with "DRT's creditors", *ie*, the Offshore Lenders, and "not DRTM's own creditors".[43] DRTM is thus seeking a "backdoor scheme of arrangement of DRT" which is an "abuse of process" because "[u]nder the IRDA and the [Companies Act], there is no concept of a scheme of arrangement for a business trust" nor is there any

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40 Sonny's 1st Affidavit at para 154.

41 DRTM's Submissions at para 62.

42 DRTM's Submissions at para 8.

43 ZZC's Submissions at paras 3 and 10.

provision for a scheme of arrangement to be brought in respect of a business trust under the BTA.[44]

27 Second, ZZC argues that DRTM's application for a moratorium is not made with a *bona fide* intention to restructure its liabilities, but a mere delay tactic for the sole purpose of staving off CWU 133. He points, in particular, to the fact that OA 1257 was filed on 2 December 2024, just one day prior to the third and resumed hearing of CWU 133.[45]

28 Third, ZZC argues that the intended scheme is unworkable:[46]

(a) One, the Onshore Lenders' support for the restructuring is crucial[47] but DRTM has not shown that a single onshore bank is amenable to the terms of the 5 Mar 2024 Draft Term Sheet.[48]

(b) Two, as DRTM will not be able to take control of the Chinese subsidiaries within the period of a six-month moratorium,[49] the condition precedent to the intended scheme of provision of DRT's audited financial statements and finalised mall valuation reports cannot be met as it is premised on DRTM obtaining control over the Chinese subsidiaries.[50]

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44 ZZC's Submissions at paras 3–7, 20–21, 34–37 and 42–45.

45 ZZC's Submissions at paras 2 and 62–69.

46 ZZC's Submissions at paras 17 and 22.

47 ZZC's Submissions at paras 18(a), 18(b) and 57.

48 ZZC's Submissions at paras 18(c), 22 and 56.

49 ZZC's Submissions at para 23.

50 ZZC's Submissions at para 59.

(c) Three, a term of the intended scheme provides for a disposal of the malls to repay the Offshore Facilities. However, any disposal of the malls is premised on the approval of DRT's unitholders, which cannot be obtained as ZZC is the majority unitholder of DRT.[51]

29 Fourth, ZZC argues that DRTM will not be able to secure the requisite level of support in a scheme from any class of creditors:

(a) One, all of the Offshore Lenders should be considered related party creditors "since they hold security over the shares of DRTM or [its] subsidiaries" and "[a]s such, their votes ought to be discounted to zero".[52]

(b) Two, in respect of DRTM's unsecured creditors in its capacity as trustee-manager of DRT, DRTM, its subsidiaries and the legal and other professionals retained by DRTM are or should be treated as related party creditors who ought not vote or whose votes ought to be discounted to zero.[53]

(c) Three, in respect of DRTM's unsecured creditors in its personal capacity, ZZC allegedly accounts for 25.41% of this category if related and disputed debts are disregarded, which means DRTM will not be able to cross the 75% threshold for this category for the intended scheme to pass.[54]

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51 ZZC's Submissions at para 58.

52 ZZC's Submissions at paras 51(c) and 52.

53 ZZC's Submissions at paras 51(a) and 51(b).

54 ZZC's Submissions at paras 18(f), 22 and 48–50.

30 Fifth, ZZC argues that there is in effect no proposed scheme for the unsecured creditors of DRTM in its personal capacity and no attempt has been made by DRTM to engage them or obtain their support.[55] The intended scheme also does not provide that if the bank lenders unanimously agree to restructure their respective facilities, this will lead to the release of cash flow to DRTM to discharge DRTM's personal debts.[56]

Wang Qiu, Cao Yong and Sun Shu

31 Wang Qiu was DRTM's CEO from 16 January 2020 to 14 February 2024. Cao Yong and Sun Shu were former independent directors of DRTM from 23 December 2016 to 29 August 2023 and 24 April 2024, respectively.[57] They claim to be owed unpaid salary and are listed by DRTM as its unsecured creditors. They oppose OA 1257, making similar arguments to ZZC's.[58]

32 Wang Qiu also sought, in the alternative, a carve-out from any moratorium to allow her to proceed with her counterclaim and application for security for costs in OC 140. This became academic when DRTM provided an undertaking to the court on 3 January 2025 not to continue with the proceedings in OC 140 if a moratorium were granted in OA 1257 and for so long as the moratorium remained in force.[59] Wang Qiu no longer pursues her request.

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55 ZZC's Submissions at paras 3, 16, 46 and 65.

56 ZZC's Submissions at para 18(d).

57 Wang's Submissions at para 2.

58 Wang's Submissions at paras 7–21.

59 Letter from Rajah & Tann Singapore LLP dated 3 January 2025 ("R&T's 3 January 2025 Letter") at para 4.

Zhang Guiming and Zhang Jieyan

33 Zhang Guiming and his sister, Zhang Jieyan, are listed by DRTM as its unsecured creditors. They oppose OA 1257.[60] Zhang Guiming also sought, in the alternative, a carve-out from any moratorium to allow him to proceed with his counterclaim in OC 108. This became academic when DRTM provided an undertaking to the court on 3 January 2025 not to continue with the proceedings in OC 108 if a moratorium were granted in OA 1257 and for so long as the moratorium remained in force.[61] Zhang Guiming no longer pursues his request.

Maybank Singapore

34 Maybank Singapore appears in OA 1257 acting on the instructions of a majority of the lenders under the IPO Offshore Facility: (a) China Merchants Bank Co Ltd, Singapore Branch, (b) DBS Bank Ltd ("DBS"), (c) Hang Seng Bank Limited ("Hang Seng"), (d) Maybank Singapore and (e) Nanyang Commercial Bank, Limited ("Nanyang Commercial"). Maybank Singapore states that the Offshore Lenders under the IPO Offshore Facility are creditors of DRTM; and that the Offshore Lenders under the IPO Offshore Facility (as a syndicate) take no position in relation to OA 1257 although this does not detract from the individual expressions of support for OA 1257 given by DBS, Hang Seng, Maybank Singapore and Nanyang Commercial on 12 November 2024[62] as Offshore Lenders under the relevant Offshore Facilities in which they are participating banks (see [58(a)] below).[63]

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60 Zhang Guiming's Written Submissions dated 23 December 2024 at para 2.

61 R&T's 3 January 2025 Letter at para 4.

62 Sonny's 1st Affidavit at pp 1370–1373 (exh "THSS-1", Tab 30).

63 Letter from Allen & Gledhill LLP to the court dated 27 December 2024 at paras 1, 4 and 7.

New Harvest

35 New Harvest is listed by DRTM as its unsecured creditor in its personal capacity.[64] New Harvest supports OA 1257. At the hearing of OA 1257, New Harvest's counsel further made an oral application for a carve-out from any moratorium to allow New Harvest to add DRTM as a nominal respondent in an arbitration that New Harvest intended to commence against ZZC in relation to their disputes as shareholders of DRTM. DRTM indicated that it had no objections.[65] However, as New Harvest's application was only made orally and for the first time at the hearing, and was not backed by any affidavit, I declined to hear the application. I indicated that New Harvest had liberty to make a proper application for a carve-out if a moratorium were granted.

Issues to be determined

36 The issues to be determined are:

(a) whether DRTM may bring OA 1257 in respect of the liabilities incurred in its capacity as trustee-manager of DRT; and

(b) if so:

(i) whether the procedural requirements for the grant of a moratorium under s 64 of the IRDA are met;

(ii) whether the substantive test for the grant of a moratorium under s 64 of the IRDA is satisfied; and

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64 DRTM's Submissions at para 36.

65 Notes of Arguments of the hearing of OA 1257 on 2 January 2025 ("NOA") at p 14:21–25.

(iii) if the requirements are met, the terms on which a moratorium order should be made.

Whether DRTM may bring OA 1257 in respect of the liabilities incurred in its capacity as trustee-manager of DRT

37 Whether DRTM may bring OA 1257 in respect of the liabilities incurred in its capacity as trustee-manager of DRT engages two sub-issues:

(a) whether, under trust law, the liabilities incurred by DRTM as trustee-manager of DRT are liabilities of DRTM and the creditors owed those liabilities are creditors of DRTM; and

(b) whether, under the relevant legislation, the restructuring of such liabilities incurred by a trustee-manager for the purposes of a business trust (*ie*, DRT) is permitted or proscribed.

Whether the liabilities incurred by DRTM as trustee-manager of DRT are liabilities of DRTM

38 It is trite that a trust is not a legal person but a relationship concerning property between the persons who hold that property on trust and those for whose benefit they do so: *Lian Chee Kek Buddhist Temple v Ong Ai Moi and others* [2024] 5 SLR 1213 at [1]. It follows from this basic principle that a trustee acts as principal in connection with the administration of the trust and all liabilities incurred by the trustee acting as such are personal liabilities of the trustee (with the trustee entitled to an indemnity out of the trust property to meet such liabilities): *E C Investment Holding Pte Ltd v Ridout Residence Pte Ltd* [2013] 4 SLR 123 at [11]–[12]; *Equity Trust (Jersey) Ltd v Halabi* [2023] AC 877 ("*Equity Trust*") at [61]. Consequently, it is inaccurate to speak of "trust creditors", which is simply a convenient shorthand to describe those creditors of the trustee to whom the trustee has properly incurred debts in the course of

acting as trustee: *Equity Trust* at [61]; *Carter Holt Harvey Woodproducts Australia Pty Ltd v Commonwealth and others* (2019) 368 ALR 390 at [24] and [129]. Such creditors would ordinarily have to enforce their claims *in personam* against the trustee but may be able to reach the trust property by way of subrogation to the trustee's right of indemnity: Lynton Tucker, Nicholas Le Poidevin & James Brightwell, *Lewin on Trusts* (Sweet & Maxwell, 20th Ed, 2020) ("*Lewin on Trusts*") at para 19-010.

39 In the context of business trusts, these principles find resonance in the definitions of "creditor" and "liabilities" under s 2(1) of the BTA, which refer to debts and liabilities being incurred and owed by the trustee-manager and not the business trust *per se*:

(a) "creditor" is defined as "a *creditor of the trustee-manager* where the liability owing to the creditor was *incurred by the trustee-manager* on behalf of the registered business trust" [emphasis added]; and

(b) "liabilities" in relation to a registered business trust is defined as the "liabilities *incurred by the trustee-manager* of the registered business trust on behalf of the registered business trust" [emphasis added].

40 The liabilities incurred by DRTM as trustee-manager of DRT are therefore liabilities of DRTM and, correspondingly, the creditors owed those liabilities are creditors of DRTM. This includes the liabilities and creditors under the Offshore Facilities and the Luso Facility in respect of which DRTM contracted as the borrower in its capacity as trustee-manager of DRT.[66] In principle, having contracted with DRTM, these creditors have a personal right

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66 Sonny's 2nd Affidavit at pp 312, 479 and 614.

to sue DRTM and to commence proceedings to have DRTM wound up: *In re Johnson* (1880) 15 Ch D 548 at 552; J D Heydon & M J Leeming, *Jacobs' Law of Trusts in Australia* (LexisNexis, 8th Ed, 2016) at para 21-02.

41 Contrary to ZZC's argument, cl 35 of the respective Offshore Facility Agreements[67] does not alter the foregoing position. Clause 35 provides, *inter alia*, that "any power and right conferred on any receiver, attorney, agent and/or delegate under the Finance Documents is limited to the assets of or held on trust for [DRT] and shall not extend to any personal assets of [DRTM]". ZZC argues that this shows that "[t]he banks are therefore not creditors of DRTM but are instead creditors of DRT".[68] This is incorrect. While a trustee may, under his agreement with a third party, (a) stipulate that he contracts as trustee only and not in his personal capacity and (b) vary and limit the scope of his personal liability or of the property by reference to which it may be satisfied (*Investec Trust (Guernsey) Ltd and another v Glenalla Properties Ltd and others* [2018] 2 WLR 1465 ("*Investec Trust*") at [203]; *Lewin on Trusts* at para 19-011), this does not mean that the third party owed a liability under that agreement is not or ceases to be a creditor of the trustee. The creditor remains a creditor of and entitled to sue the trustee because the legal personality of a trustee is *unitary*: *Investec Trust* at [59(iii)]. Put simply, cl 35 effects a partitioning of *assets* between (a) assets held by DRTM on trust for DRT and (b) assets held by DRTM on its own account, such that the Offshore Lenders that DRTM contracted with *qua* trustee-manager may have recourse only to the former for satisfaction of their claims. Clause 35 does not, as ZZC argues, effect any partitioning of *liabilities* between DRTM and DRT such that DRTM ceases to be personally liable to creditors for the loans under the Offshore Facilities.

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67 Sonny's 2nd Affidavit at pp 439–440, 585–586 and 733–734.

68 ZZC's Submissions at paras 10 and 12–14.

Whether the restructuring of the debts incurred by DRTM as trustee-manager of DRT is permitted

42 ZZC further argues, however, that where the intended scheme does not concern "creditors of DRTM in its personal capacity", it is in substance an intended scheme of arrangement to restructure debts of *DRT*, a business trust, and this is not permitted.[69] ZZC cites *Re Tantleff, Alan* [2023] 3 SLR 250 ("*Tantleff*") in support of his proposition that "[u]nder the IRDA and the CA, there is no concept of a scheme of arrangement for a business trust".[70]

43 In my view, ZZC's reliance on *Tantleff* is misplaced. In *Tantleff*, an application was made for the proceedings under Chapter 11 of the United States Bankruptcy Code 11 USC (US) (1978) concerning Eagle Hospitality Real Estate Investment Trust ("EH-REIT"), a publicly held real estate investment trust in Singapore, to be recognised in Singapore pursuant to the Model Law on Cross-Border Insolvency (30 May 1997) promulgated by the United Nations Commission on International Trade Law ("Model Law"), as adapted and set out in the Third Schedule to the IRDA and given force of law in Singapore under s 252(1) of the IRDA. The court found that EH-REIT did not come within the scope of the Model Law as implemented in Singapore, reasoning that:

(a) The implementation of the Model Law in Singapore was by way of Part 11 of the IRDA, which was within that segment of the IRDA (Parts 4 to 12 of the IRDA) dealing with corporate entities, which EH-REIT was not (at [25]).

(b) There did not seem to be anything in the IRDA or its language that extended its application to EH-REIT. Part 4 and s 61(1) of the IRDA

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69 ZZC's Submissions at para 3–4 and 34–37.

70 ZZC's Submissions at para 4, footnote 6 and para 37, footnote 32.

specified the interpretation of the terms used in Parts 4 to 12 of the IRDA and these were limited to corporate insolvency with no mention of business trusts or real estate investment trusts. This made sense as other legislation had already been enacted to govern aspects of such trusts, such as the winding up of a registered business trust under the BTA by order of court (at [26]).

(c) Pursuant to Art 1(2) of the Model Law read with para 5(1) of the Insolvency, Restructuring and Dissolution (Prescribed Companies and Entities) Order 2020 (the "Prescribed Companies and Entities Order"), entities which were authorised under the Securities and Futures Act 2001 (2020 Rev Ed) and the BTA were excluded from the scope of the Model Law and it was logical to infer that EH-REIT itself would not come within the Model Law as well (at [27]).

44 The above reasoning in *Tantleff* was directed at the issue of whether a *real estate investment (or business) trust* came within the scope of the *Model Law* and must be understood in that context. *Tantleff* did not address and does not apply to the pertinent question in the present case, *viz*, whether, where the *trustee-manager* of a business trust is a *company*, it may apply for a moratorium under s 64 of the IRDA in order to propose a *scheme of arrangement* between itself and its creditors in respect of debts incurred for the purposes of the trust.

45 In this regard, it is pertinent to note that s 64(1) of the IRDA contemplates an application "[w]here a company proposes, or intends to propose, a compromise or an arrangement between *the company* and *its creditors* …" [emphasis added]. Pursuant to s 63(3) of the IRDA, a "company" in Part 5 of the IRDA (titled "Scheme of Arrangement" and in which s 64 falls) is "any corporation liable to be wound up under [the IRDA], … exclud[ing]

such company or class of companies as the Minister may by order in the *Gazette* prescribe". In other words, Parliament left it to the Minister to determine the companies to be excluded from the application of Part 5 of the IRDA.

46 It is unarguable that DRTM is a company liable to be wound up under the IRDA – indeed, having himself commenced CWU 133 against DRTM, it is not open to ZZC to argue otherwise. Nor do I think that a trustee-manager is a class of company that has been excluded by specific provision, since the list in para 3 of the Prescribed Companies and Entities Order, which specifically sets out classes of companies that are excluded from the above definition of "company" in s 63(3) of the IRDA, does not include a trustee-manager of a business trust registered under the BTA. In contrast, para 5(1)(*ze*) of the Prescribed Companies and Entities Order, which was specifically referenced in *Tantleff* (see [43(c)] above), *does* expressly list a trustee-manager of a business trust registered under the BTA as a corporation excluded from the application of the Model Law. In my view, if the Minister had intended to exclude a trustee-manager of a business trust from the regime on schemes of arrangement in Part 5 of the IRDA, this would have been expressly reflected in para 3 of the Prescribed Companies and Entities Order, given that certain classes of companies – for example, "banking corporation" and "finance company licensed under section 6 of the Finance Companies Act 1967" – are commonly listed in *both* paras 3 and 5 of the Prescribed Companies and Entities Order. Accordingly, I am satisfied that DRTM falls within the definition of a "company" in Part 5 of the IRDA and is not precluded from making an application under s 64(1) of the IRDA. And, as explained at [38]–[41] above, DRTM's creditors would include creditors that are owed debts incurred by DRTM as trustee-manager of DRT. An intended scheme between DRTM and such creditors may thus properly be the subject of an application under s 64 of the IRDA.

47 The fact that (Part 7 of) the BTA contains a separate regime for *winding up* a registered business trust does not detract from this conclusion as that relates to a different corporate insolvency proceeding (winding up as opposed to a scheme of arrangement) involving a different subject (the business trust as opposed to the trustee-manager).

Whether the procedural requirements for the grant of a moratorium are met

48 Being satisfied of DRTM's standing to bring OA 1257, I turn to consider if the procedural requirements for the application have been met. The conditions set out in s 64(2) of the IRDA are satisfied.[71] DRTM has also complied with the notice requirements in ss 64(3)(*a*) and 64(3)(*b*).[72] Further, DRTM has provided a list of every secured creditor of the company as at 30 June 2024, in compliance with s 64(4)(*c*);[73] and a list of its unsecured creditors in its capacity as trustee-manager of DRT as at 30 June 2024[74] and a list of its unsecured creditors in its personal capacity as at 30 September 2024,[75] in compliance with s 64(4)(*d*). I will address the requirements in ss 64(4)(*a*) and 64(4)(*b*) in the course of considering if the substantive test for the grant of a moratorium is satisfied.

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71 Sonny's 1st Affidavit at para 140; DRTM's Submissions at para 31.

72 Sonny's 2nd Affidavit at paras 73–76 and pp 822–846, 848–851 and 853–855 (exh "THSS-2", Tabs 13, 14 and 15); DRTM's Submissions at para 32.

73 Sonny's 1st Affidavit at para 122, S/N 1–7, 14–18, 20–23 and 27; DRTM's Submissions at paras 34 and 36(1).

74 Sonny's 1st Affidavit at para 124 and pp 1318–1320 (exh "THSS-1, Tab 25); DRTM's Submissions at paras 35 and 36(2).

75 Sonny's 1st Affidavit at para 128 and pp 1362–1363 (exh "THSS-1", Tab 28); DRTM's Submissions at paras 35 and 36(3).

Whether the substantive test for the grant of a moratorium is satisfied

49 The substantive test for whether to grant DRTM a moratorium is whether, on a broad assessment, there is a reasonable prospect of the intended scheme of arrangement working and being acceptable to the general run of creditors: *Re All Measure Technology (S) Pte Ltd (RHB Bank Bhd, non-party)* [2023] 5 SLR 1421 ("*All Measure Technology*") at [10], citing *Re IM Skaugen SE and other matters* [2019] 3 SLR 979 ("*IM Skaugen*") at [57]. In making the broad assessment, the court will consider:

(a) whether the application is made in good faith, *ie*, whether DRTM is motivated by a genuine desire to restructure its debts: *All Measure Technology* at [10(a)]; *IM Skaugen* at [72]; and

(b) whether DRTM has furnished evidence of creditor support for the moratorium, an explanation of the importance of that support and a brief description of the intended scheme, as required under ss 64(4)(*a*) and 64(4)(*b*) of the IRDA, in a way that assists the court in making a broad assessment of whether the intended scheme is feasible and merits consideration by the creditors: *All Measure Technology* at [10(b)(ii)].

The application is made in good faith

50 I find that OA 1257 is brought by DRTM in good faith, borne by a genuine desire to obtain breathing room to further its efforts at debt restructuring. That DRTM is serious about restructuring its debts is evidenced by the fact that discussions with its bank lenders have been ongoing since 2023 and some 16 drafts of the restructuring term sheet have been iterated (see [21] above). While the last draft is the 5 Mar 2024 Draft Term Sheet, it would be overly simplistic to conclude that DRTM had disengaged from its restructuring efforts after 5 March 2024; the express support of four of the Offshore Lenders

for the moratorium sought by DRTM (see [58(a)] below) indicates otherwise. Nor should the somewhat long-drawn negotiation process be held against DRTM at this time, given the relatively complex, cross-border elements involved in the debt restructuring exercise.

51 ZZC argues, by analogy to *All Measure Technology*, that there has been an "abject lack of creditor engagement" *vis-à-vis* DRTM's unsecured creditors.[76] Relatedly, at the hearing of OA 1257, ZZC's counsel also contended that there was a lack of particularisation in the intended scheme, especially in relation to DRTM's unsecured creditors (see also [30] above).[77] It is said that these are indicators of a lack of *bona fides* and seriousness in DRTM's restructuring effort.

52 I do not agree. In the first place, the charge of lack of particularisation obviously cannot be levied against the entire intended scheme. The intended scheme proposal *vis-à-vis* the Offshore Lenders, to whom DRTM owes undisputed debts that collectively form the largest proportion of its liabilities, is detailed and weighty (see [21] above).

53 It is true that, in contrast, there is only a vague intended proposal *vis-à-vis* DRTM's unsecured creditors (see [23] above). However, this does not warrant an immediate conclusion of lack of *bona fides*. The cogency and reasonableness of an applicant's explanation for a lack of details in an intended plan must be considered before determining whether such lack of particularisation would affect the assessment of the applicant's *bona fides*: *Re Pacific Andes Resources Development Ltd and other matters* [2018] 5 SLR 125

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76 ZZC's Submissions at paras 67–68.

77 NOA at p 15:17–29.

("*Pacific Andes*") at [64]. In *Pacific Andes*, the court found that the "thinness of details" in the restructuring plan was due to the plan being contingent on the restructuring proceedings of other business units in other jurisdictions, and that this was a cogent and reasonable explanation for the paucity of details (at [64]). In the present case, I am prepared to accept at this stage the explanation given by DRTM's counsel at the hearing that time is required to develop the terms of the proposal for its unsecured creditors as such terms will depend on DRTM's negotiations with its bank lenders for the release of available cash to discharge DRTM's unsecured liabilities.[78] Further, it is not uncommon to expect that the restructuring efforts of an applicant at the stage of applying for a moratorium are nascent or not at a level of maturity to be placed before a scheme meeting: *IM Skaugen* at [57]. Viewed globally, the lack of particulars in only a relatively narrow aspect of DRTM's intended scheme (*viz*, its plan *vis-à-vis* its unsecured creditors), for which there is a reasonable explanation, does not affect my assessment that DRTM has brought OA 1257 in good faith.

54 The same explanation satisfactorily answers ZZC's related complaint of DRTM's lack of engagement with its unsecured creditors. DRTM needs to first firm up the issue of repatriation of cash with the Onshore Lenders before narrowing down which unsecured creditors will be parties to the intended scheme of arrangement. Given the indeterminate composition of this class at this stage, little meaningful engagement can be had, and it is not unreasonable that no real attempt to engage with the unsecured creditors has been made yet.

55 In my view, *All Measure Technology* does not assist ZZC as the defects identified by the court there far outstrip ZZC's criticisms of DRTM's intended scheme in this case. In *All Measure Technology*, the poor particularisation

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78 NOA at p 4:9–19.

included "clearly contradictory particulars about a key plank of [the] proposed restructuring plan" which the applicant had "not satisfactorily explained … despite being given the opportunity to do so" (at [30]); no explanation for how a stipulated valuation for the proposed disposal of the applicant's inventory was derived (at [31]); and no explanation for a proposed haircut of 95% of all but one creditor's debts (at [32]). As far as lack of creditor engagement was concerned, it appears that the applicant made basically no effort at engaging any of its creditors on the proposed restructuring (at [16]–[17]), and it was noted that the applicant had not even been able to particularise the debts of its creditors accurately so as to enable its creditors to have accurate information to assess the proposed scheme (at [14]–[15]). It was a confluence of all these defects, and more, that drove the court to conclude that the moratorium application had not been made in good faith or with any serious intent and thought (at [29]). Given all of this, ZZC cannot realistically liken the problems in *All Measure Technology* to the alleged defects he has identified in DRTM's intended scheme (a) which are localised to a particular bloc of potential scheme creditors and (b) for which DRTM has, in any event, provided a satisfactory explanation at this point.

56 ZZC also argues that DRTM's application is a tactic to delay the proceedings in CWU 133 as the application was filed on 2 December 2024, just one day before the third and resumed hearing of CWU 133, and even though "time entr[ies]" in "R&T's timesheet which accompanied its bill to DRTM" indicate that DRTM had received legal advice on the viability of applying for a scheme of arrangement since April 2023.[79] I do not accept these arguments. The contents of any legal advice apparently received by DRTM are unknown, legally privileged and should not be speculated on. Moreover, that DRTM has

[79] ZZC's Submissions at paras 2 and 63–65.

been taking legal advice on restructuring its debts over a period of time is not surprising given the scale and complexity of the intended restructuring, and should not be counted against DRTM given that it does not appear that DRTM has simply been lying idle since it first took advice (see [50] above). As for CWU 133, the hearing was repeatedly adjourned, through no fault of DRTM (see [18] above), until 3 December 2024. There is nothing inherently wrong with DRTM assessing that the critical juncture at which it had to apply for a moratorium was prior to the 3 December 2024 hearing of CWU 133. A moratorium is sought precisely to obtain breathing room from ongoing litigation in order to focus on restructuring efforts and it is not unnatural for DRTM to have brought OA 1257 in reaction to threatened winding up proceedings.

The intended scheme is feasible and merits consideration by the creditors

57 I further find that, on a broad assessment, there is a reasonable prospect of the intended scheme of arrangement working and being acceptable to the general run of creditors.

58 First, DRTM has received support from its creditors for the moratorium:

(a) Among DRTM's secured creditors, DBS, Hang Seng, Maybank Singapore and Nanyang Commercial (the "Four Offshore Lenders"), which are collectively owed approximately 53.06% of the debt owed to the Offshore Lenders, have provided letters expressing support for the moratorium sought. DBS, Hang Seng and Maybank Singapore have also stated that they are prepared to consider and, if appropriate, to support

the intended scheme, subject to a review of the full terms and details of a proposed scheme.[80]

(b) Among DRTM's unsecured creditors in its capacity as trustee-manager of DRT, eight unrelated creditors, which appear to be providers of professional and financial services to DRTM, have expressed support for the moratorium sought.[81]

(c) Among DRTM's unsecured creditors in its personal capacity, two unsecured creditors, a management consultancy firm and a law firm, have expressed support for the moratorium sought; and several other creditors including New Harvest have also expressed support.[82]

59 I find the support from the Four Offshore Lenders and the lack of objection from any of the other Offshore Lenders particularly significant given that the centrepiece of the intended scheme is the restructuring of the Offshore Facilities. As pointed out by DRTM's counsel at the hearing of OA 1257, it is incorrect for ZZC to contend that the Offshore Lenders are related creditors as they do not hold security over the shares in DRTM or the units in DRT.[83] I am less able to assess the quality of the support from the supporting unsecured creditors as little information was provided by DRTM on them and the debts they are owed (save for New Harvest, an obvious related party as the majority shareholder of DRTM, and on whose support I place less weight). I am also cognisant that the non-parties appearing at the hearing of OA 1257 (aside from

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80 DRTM's Submissions at paras 49–51; Sonny's 1st Affidavit at paras 143–147 and pp 1370–1373 (exh "THSS-1", Tab 30).

81 Letter from Rajah & Tann Singapore LLP to the court dated 31 December 2024 ("R&T's 31 December 2024 Letter") at para 5 on pp 2–3.

82 R&T's 31 December 2024 Letter at para 5 on pp 4–5.

83 NOA at p 9:23–27.

Maybank Singapore and New Harvest) oppose the moratorium. At the same time, however, I do not consider it appropriate at the present stage to entertain ZZC's arguments regarding which creditors' votes should be discounted and by how much (see [29(b)]–[29(c)] above). As DRTM pointed out, the unsecured liabilities that will be part of the scheme remain to be determined.[84] In fact and ironically, inasmuch as ZZC argues that certain unsecured creditors should be disregarded for being related parties, he, Aqua Wealth and/or Bounty Way would arguably also be related creditors given their direct and/or indirect shareholding in DRTM. Further and in any event, the court should refrain from undertaking a vote count when assessing the level of creditor support for a moratorium, and restrict itself to making a broad assessment of whether the intended compromise is feasible and merits consideration by the creditors: *IM Skaugen* at [58]. Thus, taking a step back and considering the matter on a broadbrush basis, I am satisfied that DRTM has for present purposes demonstrated sufficient evidence of creditor support for the moratorium sought.

60 Second, as the intended scheme is part of an intended global debt restructuring that will include a consensual restructuring of DRTM's liabilities under the Onshore Facilities, the Onshore Lenders' support for the restructuring is crucial and will impact the feasibility of the intended scheme. DRTM acknowledges this.[85] Although the Onshore Lenders are not strictly parties to the intended scheme and thus will not be required to manifest their support through voting, I consider that their support is a legitimate and relevant consideration as the court should be entitled to consider any factors that would unquestionably lead to a failure of the intended scheme at an early stage in the process: *Re Noble Group Ltd (No 1)* [2019] BCLC 505 at [76]. However,

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84 DRTM's Submissions at paras 55–56.

85 DRTM's Submissions at para 43.

bearing in mind that the court should not be overzealous in its scrutiny of an intended scheme at its developmental stage (*IM Skaugen* at [65]; *Re Picotin Pte Ltd and other matters* [2024] SGHC 156 at [14]), I find that, for the purposes of this stage of the proceedings, DRTM has shown sufficient potential for support from the Onshore Lenders such that it cannot be said at this juncture that the intended scheme is unfeasible or doomed to fail.

61 One, I accept DRTM's submission that the Onshore Lenders would have some incentive to support the intended global restructuring of DRTM's offshore and onshore liabilities as the present Intercreditor Deeds preclude the Onshore Lenders from being paid beyond a certain amount unless the Offshore Lenders are fully repaid and from taking enforcement action without the requisite levels of approval from the Offshore Lenders.[86]

62 Two, I accept DRTM's point that there is no evidence at present that the Onshore Lenders are opposed to a restructuring that would complement the intended scheme.[87] ZZC relies on (a) an e-mail from China CITIC Bank International Limited, Singapore Branch ("China CITIC") dated 29 March 2024 ("China CITIC's First E-mail"),[88] (b) an e-mail from China Construction Bank Corporation, Macau Branch dated 22 October 2024[89] ("China CBC's E-mail"); (c) an e-mail from China CITIC dated 23 October 2024[90] ("China CITIC's Second E-mail"); and (d) the fact that Bank of China Limited, Zhongshan

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86 DRTM's Submissions at paras 5 and 44; Sonny's 1st Affidavit at pp 222–631 (exh "THSS-1", Tab 6): Intercreditor Deeds at cl 5.1 and cl 11.3 read with cl 1.1.

87 Sonny's 2nd Affidavit at para 34.

88 2nd Affidavit of Zhang Zhongming filed in CWU 133 on 25 July 2024 ("ZZM's 2nd Affidavit in CWU 133") at pp 248–254.

89 1st Affidavit of Poon Yu Da filed on behalf of ZZC, Aqua Wealth and Bounty Way on 26 December 2024 ("Poon's Affidavit") at pp 12–15.

90 Poon's Affidavit at pp 22–25.

Branch ("BOC Zhongshan"), as the Facility Agent and Security Agent under the IPO Onshore Facility, had procured letters of demand to be issued on 17 October 2024[91] in respect of the default under the facility while remaining "notably silent about the [5 Mar 2024 Draft Term Sheet]", as purported evidence of a lack of support from the Onshore Lenders.[92] I do not agree with ZZC's characterisation of these matters as demonstrating a lack of support:

(a) In respect of the three e-mails, the banks that sent them appear to be Offshore Lenders and it is not clear how ZZC relies on them as evidence of the *Onshore Lenders'* alleged lack of support.[93] In any event, I do not think the e-mails demonstrate a lack of support.

(b) In respect of China CITIC's First E-mail, the context was that FTI had written to bank lenders on 28 March 2024 stating that it "ha[d] not received any adverse feedback" from the lenders[94] following an earlier e-mail on 7 March 2024[95] in which FTI had called on the lenders to confirm their positions on the 5 Mar 2024 Draft Term Sheet by 28 March 2024. China CITIC's First E-mail was sent in reply to FTI's 28 March 2024 e-mail, and ZZC relies on the bank's statement therein that "silence doesn't mean 'no adverse feedback'".[96] However, China CITIC's First E-mail at best communicates the bank's position as of 29 March 2024 and would thus be superseded by China CITIC's Second

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91 ZZM's 2nd Affidavit in CWU 133 at pp 651–667.

92 ZZC's Submissions at para 56; ZZC's 1st Affidavit at paras 135(a)–(d).

93 Sonny's 1st Affidavit at paras 28 and 30.

94 ZZM's 2nd Affidavit in CWU 133 at p 248.

95 ZZM's 2nd Affidavit in CWU 133 at pp 250–251.

96 ZZM's 2nd Affidavit in CWU 133 at p 248; ZZC's 1st Affidavit at para 135(a).

E-mail which, as I discuss next, does not exhibit hostility towards DRTM's intended scheme of arrangement under FTI's advice.

(c) The context to China CBC's E-mail and China CITIC's Second E-mail appears to be that a rival restructuring plan by a different financial advisor (*ie*, not FTI) had been sent to these banks for their review. China CITIC's Second E-mail stated that "regarding the choice of financial advisor, we maintain an open attitude based on the outcome of debt restructuring completion, with the main criteria being whether creditors' interests can be protected and whether restructuring can be implemented", and while "we have not yet approved FTI's restructuring plan", "[w]e emphasize again: continuing to advance and complete the restructuring is our focus".[97] China CBC's E-mail stated that "[o]ur bank has not formally approved any previous restructuring plans" and "hope[d] this restructuring can receive practical support from all stakeholders, which will be a necessary condition for successful restructuring".[98] I do not read these e-mails as displaying hostility towards FTI or an FTI-led restructuring; rather, both of these banks have exhibited a willingness to consider restructuring plans and I do not see why that would exclude proposals made by DRTM.

(d) Finally, in respect of the letters of demand sent on behalf of BOC Zhongshan, it is not unusual that BOC Zhongshan would have taken steps to preserve its legal position. However, the issuance by a bank of a demand letter is not mutually exclusive from the bank considering or being open to considering, without prejudice to its legal position, a

97 Poon's Affidavit at pp 22–23.

98 Poon's Affidavit at pp 12–15.

consensual debt restructuring even though the latter is not expressed in the demand letter.

63 That said, as I emphasised to DRTM's counsel at the hearing of OA 1257, more concrete evidence of the Onshore Lenders' positions may be required if this matter progresses.[99]

64 Third, as for ZZC's other criticisms of the workability of the intended scheme (see [28(b)] and [28(c)] above), I find that they are premised on applying a degree of scrutiny that goes beyond the broadbrush assessment that the court should limit itself to in a moratorium application (*IM Skaugen* at [56]–[57]; *Pacific Andes* at [65], citing *Re Conchubar Aromatics Ltd and other matters* [2015] SGHC 322 at [12]), and I thus decline to consider them in detail. I will simply observe that:

(a) One, it is presently unclear that, or to what extent, DRTM must have taken over control of the Chinese subsidiaries before the intended scheme may be proposed at a scheme meeting.[100]

(b) Two, as pointed out by DRTM's counsel, while a disposal of the malls is contemplated under the 5 Mar 2024 Draft Term Sheet, it is also proposed that, in the event DRT's unitholders do not vote in favour of the requisite resolutions to permit a sale, "[the] Lenders would be entitled to enforce security to effect the sale of the assets".[101]

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99 NOA at p 5:13–18.

100 NOA at pp 6:22–8:12.

101 NOA at p 8:22–31; Sonny's 1st Affidavit at p 1043 (exh "THSS-1", Tab 17): 5 Mar 2024 Draft Term Sheet at S/N 7.

In short, these are matters which may be further negotiated if a moratorium were granted.

65 I therefore conclude that DRTM has satisfied the conditions in ss 64(4)(*a*) and 64(4)(*b*) of the IRDA and that, on the broad and general assessment that is mandated, there is a reasonable prospect of the intended scheme working and being acceptable to the general run of creditors. DRTM should thus be granted an order for a moratorium.

The terms of the moratorium order

Length of the moratorium

66 I grant a six-month moratorium from the date of this judgment, as sought by DRTM. In my view, given that the intended scheme is part of a larger cross-border debt restructuring effort involving multiple offshore and onshore bank lenders, DRTM will require time to engage the relevant stakeholders and make meaningful progress in its engagements. It is not realistic to expect DRTM to be in a position to propose a scheme within a timeframe that is less than six months and it therefore does not make commercial sense to grant a moratorium for a shorter period. Although ZZC's counsel highlighted at the hearing of OA 1257 that the court in *IM Skaugen* had considered a six-month moratorium to be too long,[102] that was an assessment based on the particular facts before the court in that case and is hardly in the nature of a prescription; s 64(1) of the IRDA empowers the court to grant relief "for such period as the [c]ourt thinks fit" and thus counsels an approach that tailors the relief granted to any debtor to its specific circumstances and needs.

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102 NOA at p 18:7–9.

Information to be provided by DRTM

67 DRTM has, in its supporting affidavit filed in OA 1257, provided the valuations as at 30 June 2023 of the seven malls in China.[103] DRTM explains that it has been unable to procure updated valuations of the malls because it has been unable to obtain full and complete information, including rental rolls for the malls, from the Chinese subsidiaries under ZZC's control.[104] Nevertheless, the valuations of the malls as at 30 June 2023 far exceed the outstandings as at 30 June 2024 under the respective facilities for which the malls serve as security:[105]

Facility	**Malls serving as security**	**Valuation of malls as at 30 June 2023**	**Outstandings due to Offshore and Onshore Lenders as at 30 June 2024**
IPO Facilities	Xiaolan Metro Mall Ocean Metro Mall Dasin E-Colour Shiqi Metro Mall	~S$1b	~S$475.9m
Doumen Facilities	Doumen Metro Mall	~S$297m	~S$192.8m
Shunde Facilities	Shunde Metro Mall Tanbei Metro Mall	~S$389.5m	~S$216.6m

103 Sonny's 1st Affidavit at para 42.

104 Sonny's 1st Affidavit at para 133.

105 Sonny's 1st Affidavit at para 45.

68 DRTM has also provided (a) a copy of DRT's Annual Report 2021 containing DRT's latest audited consolidated financial statements for the year ended 31 December 2021 and (b) DRT's latest unaudited interim consolidated financial statements for the six-month period ended 30 June 2023.[106] DRTM has similarly been unable to obtain the information required to finalise the audited financial statements for DRT and DRTM.[107]

69 DRTM further explains that as all working capital of DRTM is financed by Sino-Ocean Capital in the meantime, it is not meaningful to provide any cash flow projections or profit and loss statements of DRT or DRTM.[108]

70 I note the financial information already furnished by DRTM; accept the constraints articulated by DRTM in providing more up-to-date information; note that DRTM has to comply with applicable regulatory requirements to make disclosure given that DRT is listed on the SGX-ST;[109] and note that in any event, none of the non-parties at the hearing of OA 1257 sought the provision of any particular information for the purposes of assessing the feasibility of the intended scheme. I therefore make more limited orders, under s 64(6) of the IRDA, for DRTM to:

(a) provide the valuation reports in respect of the valuation of the malls referred to at [67] above, within two weeks from the date of this order;

(b) provide information relating to any acquisition of, disposal of or grant of security over any property by DRTM, not later than 14

106 Sonny's 1st Affidavit at paras 116–121.

107 Sonny's 1st Affidavit at para 133.

108 Sonny's 1st Affidavit at para 134.

109 NOA at p 11:29–32.

days after the date of the acquisition, disposal or grant of security; and

(c) provide quarterly updates of DRTM's company-level statements of financial position and comprehensive income,[110] such provision to start within two weeks from the date of this order.

The information is to be provided by way of an affidavit filed in court and made available to all of DRTM's known creditors.

Effect of the moratorium

71 In Prayer 2 of OA 1257, DRTM sought an order for the moratorium to "apply to any act of any person in Singapore or within the jurisdiction of the [c]ourt, whether the act takes place in Singapore or elsewhere". Section 64(5)(*b*) of the IRDA states that an order for a moratorium made under s 64(1) "may be expressed to apply to any act of any person in Singapore or within the jurisdiction of the [c]ourt, whether the act takes place in Singapore or elsewhere". However, the court in *IM Skaugen* cautioned against making an "omnibus order" that is not clearly targeted at restraining a *specific act* or acts of a *specific party* who is in Singapore or within the jurisdiction of the court (at [86]). In the present case, DRTM has referred vaguely to the possibility of "a creditor bringing enforcement proceedings against the trust assets overseas" or "various persons opposing DRTM … initiat[ing] further satellite and ancillary litigation in other jurisdictions so as to continue the pressure on DRTM".[111] These allusions lack the requisite specificity and I decline to make the omnibus order sought by DRTM. This does not preclude DRTM from making an application for a more specific order if it becomes necessary to do so.

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110 Sonny's 1st Affidavit at pp 1357–1360 (exh "THSS-1", Tab 27).

111 DRTM's Submissions at para 66.

Conclusion

72 I make an order in terms of Prayers 1 and 3 and make no order on Prayer 2 of OA 1257. I also make the additional disclosure orders set out at [70] above.

73 I will hear the parties on costs.

Kristy Tan
Judicial Commissioner

Chew Xiang, Priscilla Soh and Alicia Tan (Rajah & Tann Singapore LLP) for the applicant;
Lee Sien Liang Joseph, Ooi Huey Hien, Ling Ying Hong Samuel and Clara Tay Ying Sui (LVM Law Chambers LLC) for the non-parties (Zhang Zhencheng, Aqua Wealth Holdings Limited and Bounty Way Investments Limited);
Chua Sui Tong (Rev Law LLC) for the non-parties (Wang Qiu, Cao Yong and Sun Shu);
Sim Chong and Choong Jia Shun (Sim Chong LLC) for the non-parties (Zhang Guiming and Zhang Jieyan);
Chan Chee Yin Andrew, Tay Yu Xi, Kenneth Wang Ye and Izzat Rashad bin Rosazizi (Allen & Gledhill LLP) for the non-party (Malayan Banking Berhad, Singapore Branch);
Siew Guo Wei, Lu Yanrong Elycia and Lee Lyi Shyuenn (Tan Kok Quan Partnership) for the non-party (New Harvest Investments Limited).