



Photo: Supreme Court of Singapore



JUPITER, JUNO AND SINGAPORE AS AN INTERNATIONAL CENTRE FOR DEBT RESTRUCTURING

A note from Indranee Rajah S.C., Senior Minister of State for Law

On 4 July 2016, space probe Juno went into orbit around Jupiter.

To do so, it had to pass over Jupiter's North Pole, through a region described by NASA scientist Dr Heidi Becker as "the scariest part of the scariest place" - belts of violent radiation where electrons bounce back and forth at the speed of light with the risk of knocking out the spacecraft's computer and electronics. Said Dr Becker: "They will go right through a space craft and strip the atoms apart inside your electronics and fry your brain if you don't do anything about it."¹

But the scientists prepared well - Juno's sensitive electronics were shielded in a one-cm thick solid titanium box, providing enough protection to carry out the programmed engine burn, slowing flight sufficiently for the probe to be captured by Jupiter's gravity and pivot its solar panels to face the sun, and putting the spacecraft perfectly into orbit.

The Juno mission put me in mind of the current state of the world economy and the work of Singapore's Committee for the Future Economy (CFE).

The global economy has already been battling headwinds and having a bumpy ride. The growth outlook for advanced economies has deteriorated – US growth momentum has slowed; the pace of recovery in the Eurozone is uneven. China's growth is projected to moderate as it rebalances its economy, with the risk that ongoing reforms may lead to a further drop in demand. Brexit has now thrown the global economy into the economic equivalent of a Jovian cosmic storm, rattling around everything in its wake. A snapshot of July 2016 headlines tells it well enough: "Bank shares hit as Wall Street Stocks end lower"; "Pound hits fresh lows as Brexit impact worries surge"; "Asian shares fall on mounting Brexit fallouts"; "Asian market hammered as yen surges and pound sinks on fresh Brexit fears".

¹ See Nasa's Juno spacecraft successfully begins orbit of Jupiter, Straits Times, 6 July 2016.

This is the environment for which the CFE is preparing. It's tough; it's challenging; the outcomes are by no means certain. But solid planning, meticulous preparation, and riding on, rather than fighting against prevailing economic forces, will make the difference.

Like Juno riding turbulence, braking and turning to catch the sun, our task, as we navigate a global economy buffeted by winds of change, is to plot the path for Singapore's future economy, prepare titanium boxes for risk management and engineer the economic engine burn to catch opportunity and chart new courses to stability, growth and prosperity.

This work is multi-faceted, complex and has many moving pieces.

One of these pieces is turning Singapore into an international centre for debt restructuring.

In 2013 the Insolvency Law Review Committee (ILRC) made recommendations to update Singapore's insolvency laws and noted that demand for debt restructuring services in Asia was growing.²

The Committee to Strengthen Singapore as an International Centre for Debt Restructuring (Committee) co-chaired by Judicial Commissioner Kannan Ramesh and myself, and comprising leading insolvency practitioners, was set up to consider how Singapore could meet that demand.

The Committee's work is even more pertinent in the current economic climate, with news of businesses facing financial difficulty increasingly heard and felt.

The Committee submitted its Report on 20 April 2016. The Report can be found at www.mlaw.gov.sg.

Public consultations were conducted from 20 April to 31 May 2016. The Singapore government has accepted the Committee's recommendations. The announcement of govt acceptance can be found at www.mlaw.gov.sg.

The Report makes 3 main recommendations:

- I. Enhancing the legal framework for restructuring
- II. Creating a restructuring friendly ecosystem
- III. Addressing the perception gap.

The recommendations are summarised below.



ENHANCING THE LEGAL FRAMEWORK FOR RESTRUCTURING

- Creating bespoke rules and procedures for restructuring, including:
 - › stipulating a clear non-exhaustive list of circumstances in which Singapore courts can assume jurisdiction over restructurings of foreign debtors;

² A copy of the ILRC recommendations can be found at www.mlaw.gov.sg.

- › enhanced moratoriums for restructuring – allow automatic moratoriums and moratoriums with *in personam* worldwide effect. These moratoriums can be extended to (i) prevent creditors from taking action overseas (if the creditor has a presence in Singapore) and (ii) related entities of the debtor;
- › debtor disclosure requirements - debtors must provide adequate information to allow restructuring stakeholders to make informed decisions;
- › consolidated proceedings before a single judge, to facilitate consistency and better oversight;
- › fast-tracked pre-negotiated restructuring plans (pre-packs) between debtors and major creditors;
- › enhancing the recognition and enforcement of Singapore restructurings. This should be done through promoting adoption of UNCITRAL Model Law on Cross-border Insolvencies, bilateral and multilateral agreements and protocols that improve communication and co-operation with foreign courts.
- Specialist Insolvency Bench
 - › to set up a specialist insolvency bench for restructuring cases, comprising both Singapore and international judges.
- Increase the use of ADR for insolvency and restructuring
 - › The Singapore International Arbitration Centre (SIAC), the Singapore International Mediation Centre (SIMC) and the Singapore Mediation Centre (SMC) should develop rules for insolvency and restructuring and strengthen their panels with insolvency specialists.



CREATING A RESTRUCTURING FRIENDLY ECOSYSTEM

- Increase the availability of rescue financing
 - › introduce provisions for super-priority liens (these will take priority over existing security);
 - › attract distressed debt financiers and specialist investors to Singapore;
 - › greater promotion of existing incentives for rescue financing.
- strengthening the insolvency profession
 - › there are already good insolvency professionals in Singapore but to be an international centre of choice, Singapore will need even more and diverse insolvency professionals of the highest quality;
 - › we should strengthen the pipeline through education, multi-disciplinary training and continuing professional development.

ADDRESSING THE PERCEPTION GAP

A recent global study showed that Singapore was rated very highly as an effective jurisdiction for cross-border insolvency by insolvency practitioners who had direct experience in restructuring work here. However, practitioners with no direct experience scored Singapore less highly.³

In short, there is a perception gap. Experiencing is believing.

The Committee has recommended that:

- › steps be taken to close the perception gap. Debt restructuring in Singapore should be proactively communicated to the wider international restructuring community;
- › Singapore-based insolvency professionals, judges and academics should increase participation in international insolvency events and platforms to raise awareness of Singapore's restructuring regime and capabilities.

In the months to come we will be implementing these recommendations.

Stakeholders in Singapore, including insolvency lawyers and accountants, should gear up for this. We hope that international players who have not yet had experience of Singapore as a restructuring jurisdiction will avail themselves of the opportunity to do so.

With these recommendations we are poised to set Singapore in a new direction as an international centre for debt restructuring as part of our plans for the future economy.

Here's where the parallel with Juno stops though. Juno is destined to end at Jupiter. We, on the other hand, need to continue to push forward into new frontiers - like that other space craft: The Enterprise. Going boldly where no man has gone before.

– Indranee Rajah S.C., Senior Minister of State for Law
26 July 2016

³ See *From discord to harmony: the future of cross-border insolvency*, South Square and Grant Thornton.