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

[2023] SGHC 148

Originating Application No 350 of 2023 and Summons No 1114 of 2023

In the matter of Part 5 and Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of All Measure Technology (S) Pte Ltd

Between

All Measure Technology (S) Pte Ltd

… *Applicant*

And

RHB Bank Berhad

… *Non-party*

EX TEMPORE JUDGMENT

[Companies — Schemes of arrangement — Whether a moratorium should be granted]

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Goh Yihan JC:

1 There are two applications before me. The main application, HC/OA 350/2023 ("OA 350"), is All Measure Technology (S) Pte Ltd's ("the applicant") application for a moratorium pursuant to s 64 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA"). The applicant had previously made another similar application within the last 12 months. RHB Bank Berhad ("RHB"), which is a creditor, opposes the applicant's application in OA 350, along with several other creditors.

2 The secondary application is HC/SUM 1114/2023 ("SUM 1114"), where the applicant seeks to amend the terms of OA 350. In essence, the amendments would (a) make the terms of the moratorium sought more precise, and (b) shorten the moratorium period from three months to two months. After considering the proposed amendments, I allow SUM 1114. As such, any order

I make in relation to OA 350 in this decision would be in light of the requested amendments in SUM 1114.

3 Having heard the parties, I dismiss OA 350 for the following reasons. First, the applicant's application does not comply with the procedural requirements in the IRDA. Second, the applicant's proposed scheme is insufficiently particularised and lacks *bona fides* on the whole. Third, there is no evidence of support from the general run of creditors except from one Mr Sam Soon ("Mr Soon"), who is said to the applicant's largest creditor, as well as two other individual creditors.

Background to OA 350

4 Before I elaborate on my reasons for dismissing OA 350, I provide some background facts in brief. The applicant's principal activity is the wholesale of medical, professional, scientific, and precision equipment distribution, as well as the sales and services of test and measurement equipment in South East Asia. The applicant went into financial distress due to various reasons, such as its business venture in Myanmar, various bad debts owed to it, and high overhead costs in supporting its regional business.

5 On 22 October 2022, the applicant first applied for a six-month moratorium under s 64 of the IRDA in HC/OA 706/2022 ("OA 706"). On 21 November 2022, the General Division of the High Court ("the General Division") heard OA 706 and granted a three-month moratorium after considering the views of some creditors. This moratorium expired on 21 February 2023. The applicant did not seek any extension to this moratorium.

6 On 6 April 2023, the applicant filed the present application (*ie*, OA 350) seeking another moratorium. Mr Sim Hong Meng ("Mr Sim"), the sole director

of the applicant, explained in his supporting affidavit dated 5 April 2023 that OA 350 was filed late in the day because he intended to secure and finalise a more substantial restructuring plan to propose to the applicant's creditors "before making this application to the court to extend [the applicant]'s moratorium".[1] In addition, Mr Sim stated in the same affidavit that he has heart-related health issues and has been advised to "avoid unnecessary stress".[2] The affidavit also, in broad terms, provided a brief summary of the applicant's restructuring plan.

7 This plan was elaborated on in a Proposal dated 17 April 2023 ("the Proposal"), which the applicant claims was sent to all of its known creditors, in the following terms:

> (a) First, it has successfully obtained Mr Soon's agreement (stated to be owed S$1.53 million) to acquire all of the applicant's shares in exchange for Mr Soon waiving his claim for repayment ("the Debt for Equity Swap"). Mr Soon would then take over full control of the applicant and its operation and use the applicant as a platform to grow his businesses.
>
> (b) Second, it intends to distribute surplus assets arising from the proceeds from the sale of a property and the applicant's balance inventory. Specifically, it was stated that Mr Sim estimates that the inventory can be sold for approximately S$10,000. The surplus assets will first be used to pay off the debts owed to the preferential creditors,

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1 Sim Hong Meng's Affidavit dated 5 April 2023 at para 7.

2 Sim Hong Meng's Affidavit dated 5 April 2023 at para 7.

and then to the applicant's unsecured creditors. This would purportedly reduce the debts of the applicant by around S$2.8m.

(c) Third, as regards the remaining debts that are not paid off by the Debt for Equity Swap and the distribution of surplus assets, it was stated that the applicant intends to make a further payment of a maximum of S$250,000 to all of the applicant's unsecured creditors *pro rata* over a period of 48 months in quarterly instalments. This would supposedly provide a recovery of approximately five cents to a dollar against an estimated remaining debt of $4.7m.

The applicable principles

8 With the above background in mind, I turn now to the applicable principles governing OA 350. It is clear that s 64(1) of the IRDA allows a company which intends to propose a scheme of arrangement to apply to court to restrain proceedings against it. In interpreting s 64(1) of the IRDA, the cases which interpreted s 211B(1) of the Companies Act (Cap 50, 2006 Rev Ed), which is the predecessor provision to s 64(1), continue to be applicable (see the High Court decision of *Re Zipmex Co Ltd and other matters* [2022] SGHC 196 ("*Re Zipmex*") at [7]). In this regard, Kannan Ramesh J (as he then was) in the seminal High Court decision of *Re IM Skaugen SE and other matters* [2019] 3 SLR 979 ("*IM Skaugen*") described a moratorium as "an extraordinary relief holding in abeyance the enforcement of the legitimate rights of creditors against the company that is seeking to restructure" (at [44]). More broadly, in determining whether such an application should be granted, the learned judge further held (at [57]) that "the court undertakes a balancing exercise between allowing the applicant the requisite breathing space and ensuring that the interests of creditors are sufficiently safeguarded".

9 In this regard, there are both procedural and substantive requirements that must be met before a moratorium can be granted under s 64(1) of the IRDA. The procedural requirements are set out in ss 64(2), 64(3), and s 64(4). It is important to note that while some of these requirements can be waived by the court, others are clearly meant to be mandatory through the use of words like "must" to describe the requirement concerned. These procedural requirements are just as important as the substantive requirements. This is because they further the court's ability to assess the substantive requirements. For example, the requirement in s 64(3)(*a*) that the company publishes a notice of its application pursuant to s 64(1) is clearly meant to identify all possible creditors, which would in turn allow the court to assess whether the intended scheme is acceptable to the general run of creditors.

10 In so far as the substantive requirements are concerned, the substantive test for whether a moratorium should be granted is whether, on a broad assessment, there is a reasonable prospect of the proposed or intended compromise or arrangement working and being acceptable to the general run of creditors (see *IM Skaugen* at [57] and the High Court decision of *Re Zipmex* at [7]). In order that a court can make this broad assessment, a moratorium application must contain sufficient particulars (see the Court of Appeal decision of *Pathfinder Strategic Credit LP and another v Empire Capital Resources Pte Ltd and another appeal* [2019] 2 SLR 77 at [48]). More specifically, it appears from the relevant case law that the courts will look to the following factors in making the broad assessment mentioned above:

(a) First, whether the moratorium application is made in good faith (*ie*, with *bona fides*) and is not an attempt to game the system by companies seeking the benefit of restraint orders without putting forward a serious proposal (see the High Court decision of

Re Conchubar Aromatics Ltd and other matters [2015] SGHC 322 at [14]). In assessing *bona fides*, the court will look at whether the proposal is sufficiently particularised, since the lack of particularisation may show the absence of serious intent and thought (see the High Court decision of *Re Pacific Andes Resources Development Ltd and other matters* [2018] 5 SLR 125 at [64]).

(b) Second, whether the company has furnished evidence of creditor support:

(i) When a company had proposed a compromise or arrangement to its creditors, evidence of creditor support must relate to support for the *compromise or arrangement* itself and an explanation of the importance of that support. In this situation, only s 64(4)(*a*) of the IRDA needs to be satisfied (see *IM Skaugen* at [48(c)]). The evidence and explanation should assist the court in making a broad assessment as to whether there is a reasonable prospect that the proposed compromise or arrangement would work and be acceptable to the general run of creditors (see *IM Skaugen* at [58]).

(ii) When a company had not proposed, but intends to propose a compromise or arrangement, it would first need to provide evidence of creditor support for the *moratorium*. The company would also need to provide a brief description of the intended compromise or arrangement. This is because *both* ss 64(4)(*a*) and 64(4)(*b*) of the IRDA must be satisfied (see *IM Skaugen* at [48(c)] and [50]). The evidence and explanation should assist the court in making a broad assessment, based on the brief description of the intended compromise or arrangement,

whether it is feasible and merited consideration by the creditors. Nevertheless, in substance, the court is doing no more than making a broad assessment of whether there was a reasonable prospect of the intended compromise or arrangement working and being acceptable to the general run of creditors (see *IM Skaugen* at [58]).

(iii) In this regard, the quality of the support is important, such that if significant or crucial creditors are supportive, that would be a material consideration. However, the court should refrain from taking a vote count but should restrict itself to making a broad assessment as to the acceptability of the scheme to the credits (see *IM Skaugen* at [58]).

11 Accordingly, applying these requirements to OA 350, I will discuss the following issues in turn, namely (a) whether the applicant complied with the procedural requirements in the IRDA, (b) whether OA 350 was made in good faith, and (c) whether OA 350 had creditor support. In considering (b) and (c), I shall also consider whether the proposed scheme was sufficiently particularised.

The applicant has not complied with the procedural requirements in the IRDA

12 To begin with, I find that the applicant has *not* complied with the procedural requirements in the IRDA.

*Sections 64(4)(*c*) and 64(4)(*d*) of the IRDA*

13 First, I am not satisfied that the applicant has fulfilled ss 64(4)(*c*) and 64(4)(*d*) of the IRDA, which require the applicant to (a) provide a list of every

secured creditor, and (b) provide a list of the 20 largest unsecured creditors (if there are more than 20 of such creditors). These lists not only enable the court to assess the quality of any creditor support, but also allow creditors to assess the applicant's total liabilities. In this regard, it is not sufficient for the applicant to have qualified the provision of such lists as being to the best of its knowledge, information, and belief, when there is clear evidence that the information contained within the lists is inaccurate. If the applicant fails to explain or correct the inaccuracy despite being given a clear opportunity to do so, then it is open to a court to doubt the accuracy of the list concerned and hold that the applicant has not satisfied the requirements under ss 64(4)(*c*) and/or 64(4)(*d*), as the case may be.

14 In the present case, RHB has highlighted how the applicant has made errors in relation to (a) the amount due and owing to it, and (b) its status as an unsecured creditor. For example, RHB submits that the applicant has completely omitted the sum of S$88,750.57 as due and owing to RHB by way of a SME Working Capital Loan under the Local Enterprise Finance Scheme ("WCL Facility"). This was despite clear references being made to the WCL Facility in the various letters of demand and statutory demand issued to the applicant. Furthermore, RHB also submits that the applicant incorrectly concluded that RHB is a secured creditor such that the debts owed to it will be paid out of a fixed deposit account. This was despite a clear breakdown of the outstanding sums owing to RHB being provided to the applicant. Moreover, this error was repeated at para 21 of the Proposal dated 17 April 2023 that has been sent to all known creditors. While the applicant has been made aware of these inaccuracies, it has not explained or corrected them even in the latest affidavit filed by Mr Sim on 9 May 2023.

15 Given the circumstances I have described above, I have my doubts as to the accuracy of the list of secured and unsecured creditors that the applicant has provided in OA 350. Indeed, if the applicant is not able to particularise its debts accurately despite being given clear opportunities to do so, it is difficult to think that creditors have accurate information to assess the proposed scheme. Correspondingly, it would be difficult for the court to make an accurate assessment as to the quality of creditor support. I therefore find that the applicant has not satisfied the requirements in ss 64(4)(*c*) and 64(4)(*d*) of the IRDA.

Section 64(4)(a) of the IRDA

16 Second, I am not satisfied that the applicant has fulfilled s 64(4)(*a*) of the IRDA, which requires the applicant to show evidence of creditor support for the compromise or arrangement that is contained within the Proposal, together with an explanation of how such support would be important for the success of the proposed compromise or arrangement. For completeness, I do not need to consider s 64(4)(*b*) in the present case, as it only applies where an applicant intends to propose the compromise or arrangement to its creditors but has not.

17 In the present case, apart from the support from Mr Soon, there has simply been no evidence of any creditor engagement over the past six months. In this regard, despite the applicant's assurance, through an affidavit filed by Mr Sim, that it "will also continue to engage with key stakeholders, including … creditors, suppliers, banks and institution partners … to provide periodic updates on the progress of the restructuring",[3] RHB points out that the applicant has neither engaged it on the proposed restructuring plan nor provided periodic

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[3] Sim Hong Meng's Affidavit dated 5 April 2023 at para 25(e).

updates on the progress of the restructuring. Moreover, as appears to be the case from the minute sheet of the case management conference held on 11 April 2023, there has been an abject lack of creditor engagement, let alone creditor support.

18 Therefore, on a broad assessment, I am not satisfied that there is a reasonable prospect of the intended compromise or arrangement being acceptable to the general run of creditors.

Section 64(3)(a) of the IRDA

19 Third, I am not satisfied that the applicant has fulfilled s 64(3)(*a*) of the IRDA, which requires the applicant to publish a notice of the present application in the Government Gazette and in at least one English local daily newspaper. Section 64(3) provides as follows:

> **64.—**(3) When the company makes the application under subsection (1) to the Court —
>
> (*a*) the company must publish a notice of the application in the *Gazette* and in at least one English local daily newspaper, and send a copy of the notice published in the *Gazette* to the Registrar of Companies; and
>
> (*b*) unless the Court orders otherwise, the company must send a notice of the application to each creditor meant to be bound by the intended or proposed compromise or arrangement and who is known to the company

20 On 4 May 2023, the applicant wrote into court to request for "guidance and direction" on the timelines for when it should publish the notice pursuant to s 64(3)(*a*) of the IRDA. While framed as a request for "guidance and direction", the applicant was really asking for permission to "hold on with publishing the notices until the Hearing [for OA 350 and SUM 1114] has [been] concluded and firm directions have been made on whether the [applicant] has the Honourable Court's leave to amend its prayers in OA 350". The applicant further stated its belief that this was an appropriate course of action as, to the best of its

knowledge, "all of the [applicant's] creditors have been duly informed of the Hearing".

21 I rejected the applicant's request and directed, by a letter dated 4 May 2023, that it complied fully with the requirements under s 64(3)(*a*) of the IRDA. Indeed, the applicant should not have made this request in the first place. To begin with, the purpose of s 64(3)(*a*) of the IRDA is to seek out presently unknown creditors who may wish to object to the application. It is clear that this purpose would be undermined if creditors are not given sufficient time to meaningfully respond. Since the applicant obviously knows that OA 350 and SUM 1114 have been fixed to be heard on the same day at the same sitting, it should have been obvious to it that it would be meaningless for the requirements of s 64(3)(*a*) to be carried out only *after* the hearing of OA 350.

22 Also, unlike s 64(3)(*b*) which contains the proviso "unless the Court orders otherwise", there is no similar proviso in s 64(3)(*a*) of the IRDA. Section 64(3)(*a*) simply states, "the company *must publish* a notice of the application in the *Gazette* and in at least one English local daily newspaper and send a copy of the notice published in the *Gazette* to the Registrar of Companies" [emphasis added]. In my view, this means that the requirement under s 64(3)(*a*) must be carried out without exception because s 64(3)(*a*) does not contain a proviso similar to s 64(3)(*b*), which would allow a court to waive the requirement. Accordingly, from a plain reading of s 64(3)(*a*), it was not open to the applicant to ask this court to, in effect, waive the requirements therein.

23 In any case, the applicant only published the required notices in *The Business Times* on 15 May 2023, and in the E-Government Gazette and the Government Gazette on 16 May 2023 and 17 May 2023, respectively. It bears emphasis that 17 May 2023 is the date of the hearing of OA 350. While

the IRDA and the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 ("CIR Rules") do not prescribe specific timeframes within which an applicant must comply with s 64(3)(*a*) of the IRDA, I do not think that the applicant has complied with the requirements therein because of the lateness of its notice.

24 In coming to this interpretation of s 64(3)(*a*), I first consider the starting words of the provision which state that "the company must publish a *notice* of the application" [emphasis added]. While s 64(3)(*a*) does not expressly provide for the *length* of notice that is required, guidance may be derived from the general provision in r 14 of the CIR Rules, which states:

> **Length of notice**
>
> **14.** Unless the Court gives permission to the contrary or otherwise provided in Parts 3 to 12 or Part 22 of the Act or these Rules, an application must be served on every person affected by the application not less than 7 days before the date of the hearing of the application.

25 As such, it is clear that the default rule is that notice, by way of service, must be given not less than seven days before the date of the hearing of the application to every person affected by the application. While r 14 only speaks of *service* and is not directly applicable where notice is required to be given through other modes, it does not mean r 14 is not relevant. In my view, the default seven-day timeframe should also apply in situations where notice is given through other modes, such as by way of publication in the Government Gazette and in an English local daily newspaper. More broadly, these various modes can be rationalised as merely being different methods of bringing an application to the attention of every person affected by the application, depending on the context. Indeed, for a moratorium application under s 64(1) of the IRDA, it might be difficult to ascertain all the persons who would be

affected by the application. As personal service would be impracticable in this context, other modes of providing notice of the application are deemed by law to be sufficient. This explains why the length of notice in s 64(3)(*a*) should not be any different from the seven-day default period in r 14 of the CIR Rules. Indeed, bearing the purpose of s 64(3)(*a*) in mind, it would make no sense to say, as in the present case, that it is satisfied by the required notice being published *on the day of the hearing*. This would not provide presently unknown creditors with sufficient time to meaningfully respond to the application.

26 In any event, while the applicant has provided a copy of the notice in *The Business Times* in a letter from its solicitors to court one day before the hearing of this application, it has failed to provide copies of the notices in the E-Government Gazette and the Government Gazette. During the hearing, counsel for the applicant, Mr Clarence Tan ("Mr Tan"), could not point me to any copy of the notices in the E-Government Gazette and the Government Gazette that have been tendered to court. This is not acceptable and shows the lack of seriousness in the application. Accordingly, even putting aside the question of whether the length of notice is sufficient, I conclude that the applicant has failed to provide sufficient evidence that it has complied with the requirements of s 64(3)(*a*) of the IRDA.

27 In a final attempt to explain away the requirements of s 64(3)(*a*) of the IRDA, Mr Tan submitted before me that those requirements had been satisfied in OA 706, and hence all creditors who were connected with the applicant would have already surfaced. This is plainly an unacceptable submission that should never have been made. First, OA 350 and OA 706 are different applications. Even if they made exactly the same prayers, each is subjected to its own procedural requirements. It cannot be that the satisfaction of the procedural requirements in an earlier application can account for failures

to do so in a latter application. Second, by Mr Tan's own characterisation, while OA 350 and OA 706 are both applications for a moratorium under s 64 of the IRDA, they involve entirely different proposals. Indeed, as a basic point, even the length of the moratorium sought is different. As such, it may well be that a creditor who decided not to contest OA 706 may now wish to be heard at OA 350. It cannot be that such a creditor need not be notified about OA 350 because the requisite notices for a different application were satisfied previously.

28 My conclusion above that the applicant has not complied with the procedural requirements in the IRDA would be sufficient for me to dismiss OA 350, and I do so indeed. But even if I am wrong as to the procedural requirements, I also find that the applicant has not complied with the substantive requirements for a moratorium.

The applicant has not complied with the substantive requirements for a moratorium

OA 350 was not made in good faith

29 To begin with, I find that OA 350 was not made in good faith, in the sense that I am not convinced that it is put forward with serious intent and thought. I say this for the following reasons.

30 First, I agree with RHB that the applicant has advanced clearly contradictory particulars about a key plank of its proposed restructuring plan, which is the purported top-up of S$250,000. In this regard, Mr Sim had said in his affidavit dated 5 April 2023 that *he* would be responsible for making this contribution, which he had characterised as being "up to SGD 250,000/-".[4]

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4 Sim Hong Meng's Affidavit dated 5 April 2023 at para 39.

However, the Proposal dated 17 April 2023 (at para 41) now states that it would be the *applicant* which would be making a "further payment of a maximum of SGD250,000 to all of the [applicant's] unsecured creditors". The applicant has not satisfactorily explained this discrepancy despite being given the opportunity to do so. Moreover, I should note that the sum of S$250,000 is qualified by the use of words "up to" and "maximum of". As such, there is some uncertainty as to what the creditors could eventually receive by way of recovery.

31 Second, I also agree with RHB that the applicant has not provided any evidence to support its claim in the Proposal (at para 31) that it will be able to sell its inventory for approximately S$10,000. Again, the applicant has not provided further particulars beyond leaving the matter open-ended. In fact, in its written submissions tendered for this hearing, the applicant actually admits that it "has not provided an explanation for how it arrived at" the figure of S$10,000.[5] Given this admission, nothing more really needs to be said about this.

32 In essence, the applicant is asking its creditors, save for Mr Soon, to accept a 95% haircut on its debts if the scheme is approved. Despite this, the applicant has not particularised the details of the intended scheme. Accordingly, coupled with the other procedural failures I had outlined above, I find that OA 350 is not put forward with serious intent and thought. It seems as if the applicant does not know how the material terms will be implemented. While Mr Tan explained that Mr Sim has been unwell, as I pointed out during the hearing, that is precisely why Mr Sim has legal counsel in the form of Mr Tan to advise him and handle the present application properly.

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5 Applicant's Written Submissions at para 8(iv).

There is no evidence of support from the general run of creditors

33 Finally, I find that there is no real evidence of support from the general run of creditors apart from Mr Soon and two other individual creditors.

34 First, it is clear that the proposed scheme in the Proposal is largely the same as that advanced in Mr Sim's initial affidavit for OA 350 dated 5 April 2023. This means that, despite having known the broad terms of the proposed scheme for more than a month before today's hearing, the applicant has not managed to show support from many more creditors apart from Mr Soon.

35 Second, although Mr Soon is the applicant's largest creditor, I find that his support for the proposed scheme is driven largely by the unique position he will be in if the scheme is approved. As such, the weight attributed to Mr Soon's support should be minimal. This is because, whereas all the other creditors will have their claims extinguished, Mr Soon will become the beneficial owner of a debt-free company, although admittedly at some risk to him.

36 In any event, even if weight were to be attributed to Mr Soon's support, it must be remembered that the support of a large creditor is not, by itself, sufficient to push the moratorium application through. For example, as the High Court found in *Re Aaquaverse Pte Ltd and other matters* [2023] SGHC 29, a moratorium application will fail if there was no reasonable prospect of the compromise or arrangement working, notwithstanding that there might be creditor support (at [8]). In any event, as it appears from the positions advanced by various creditors during the hearing, there is now a majority *objection* against OA 350. In addition, for the reasons I have stated above, I am not convinced that the proposed scheme will be acceptable to the general run of its creditors.

37 Finally, it needs to be remembered that this is the applicant's *second* application for a moratorium in the last 12 months. The applicant has had the opportunity in the past to obtain creditor support but has not taken benefit of the earlier moratorium but instead allowed it to lapse. In the absence of a workable scheme, it would not be right to prejudice the creditors' rights again in so short a time.

Conclusion

38 For all the reasons above, I dismiss OA 350. In sum, I do not think that the applicant has satisfied the procedural and substantive requirements for a mortarium to be granted pursuant to s 64(1) of the IRDA. I make the consequential costs orders as I outlined at the end of the hearing.

Goh Yihan
Judicial Commissioner

Tan Ming Yew Clarence (Fervent Chambers LLC) for the applicant;
Sim Kwan Kiat and Yeo En Fei Walter (Rajah & Tann Singapore LLP) for RHB Bank Bhd;
Timothy Ang Wei Kiat (Rajah & Tann Singapore LLP) for Standard Chartered Bank (Singapore) Ltd;
Toh Ming Wai (Harry Elias Partnership LLP) for Hongkong and Shanghai Banking Corporation Ltd;
Kieran Martin Singh Dhaliwal (Aquinas Law Alliance LLP) for Eifel Capital Pte Ltd, FundTier Pte Ltd and Cash in Asia Pte Ltd;
Ng Wei Kit Joshua (Focus Law Asia LLC) for Hioki Singapore Pte Ltd;
Sam Soon Chin Swee (unrepresented) for Y Fong Electrical Co Ltd.