



## ASSET-BASED LENDING IN SINGAPORE

### 1. OVERVIEW

#### 1.1 **To what extent are asset-based lending structures used (e.g., revolving and term loan facilities secured by present and future accounts and inventory, with the amount of loans available at any time based on the value of such assets)?**

Asset-based lending structures are commonly used, whether for extending credit facilities of a revolving or fixed term nature and often involve security over assets such as present and future accounts receivable, inventory, real estate and chattels taken by way of fixed and floating charges, mortgages, assignments and pledges.

Typically, amounts of loans made available on the security of such assets are dependent on and based on a percentage of the valuation of such assets, say about 80% or 90% of the valuation.

#### 1.2 **What other forms of working-capital lending are customarily used?**

Other forms of working capital loans include overdrafts, hire purchase and equipment leasing.

The Singapore government also offers working capital loans under the:

- Internationalisation Finance (IF) Scheme that involves a S\$15million loan to finance overseas expansions;
- Loan Insurance Scheme (LIS) that secures loans by getting them insured with the government subsidizing part of the insurance premium; and
- Micro Loan Programme allows very small business to get loans of up to S\$100,000.

#### 1.3 **Is factoring prevalent in your market? Is it generally done on a recourse or non-recourse basis?**

Factoring is prevalent, often (but not always) on a recourse basis, and can be for the purpose of providing working capital, credit protection or collection and management of receivables.

#### 1.4 **Who are the main players in the lending marketplace (e.g., domestic relationship-based banks, non-bank lenders, foreign lenders)?**

Main players in the lending marketplace comprise local banks and financial institutions as well as local branches of foreign or international banks and financial institutions, regulated and licensed under the various regimes by the central bank, the Monetary Authority of Singapore.

Singapore has a robust banking industry, with one local bank having recently been ranked the world's strongest bank by Bloomberg Markets magazine and another 2 local banks making it to the top six, namely 5<sup>th</sup> and 6<sup>th</sup> strongest, in that ranking, out of a total of 70 banks from around the world.

## **2. REGULATORY ISSUES**

### **2.1 Are any special licenses or regulatory approvals required for a foreign lender to (i) make loans, (ii) take liens on collateral or (iii) use the court system?**

- (i) A person may not undertake moneylending business in Singapore without a moneylender's licence to do so, unless such person is excluded or exempted from such licence requirement. What constitutes moneylending business is determined on a full consideration of all the circumstances and is not conclusive on the basis only of whether it is a one-time or "ad hoc" transaction since such transaction may potentially still tantamount to moneylending business. An application for a moneylender's licence may be refused if the applicant is not ordinarily resident or is not a registered company or business in Singapore. The moneylender's licence requirement does not apply to "Excluded Moneylenders" who are any of the following:
- entities incorporated or empowered under written law to lend money;
  - banks, finance companies, etc. regulated and licensed by the Monetary Authority of Singapore within the purview of lending money;
  - registered credit societies;
  - licensed pawnbrokers;
  - those who lend solely to
    - its employees as an employment benefit;
    - accredited investors;
    - corporations, limited liability partnerships, trustees or trustee-managers of business trusts for the purpose of the business trusts or trustees of real estate investment trusts for the purpose of the real estate investment trusts (or combinations of these);
  - those whose carry on business, the primary object of which is not the lending of money but who lend money in the course of and for the purpose of such business.
- (ii) There is no licence or approval required to take liens or collateral. Furthermore, although a foreign person is not permitted to acquire certain types of residential property (i.e. residential property which do not have condominium status) in Singapore, an exception to this restriction is such acquisition by way of a mortgage or charge.
- (iii) The court system is open to foreign plaintiff, without any regulatory licence or approval. However, a defendant who has been sued by a foreign plaintiff is entitled to apply for and may be granted an order by the court compelling such foreign plaintiff to put up security for the costs of the proceedings commenced by the plaintiff, should the foreign plaintiff fail in its action.

### **2.2 Is interest payable by a domestic company to a U.S. lender subject to withholding tax?**

Interest paid by a Singapore resident to a non-resident party is subject to withholding tax in Singapore at the rate of 15%. Singapore has signed an Avoidance of Double Taxation Treaty with each of:

- (i) USA on limited terms, so that withholding tax on interest paid to a USA party remains at 15%; and
- (ii) UK on more comprehensive terms, so that withholding tax on interest paid to a UK party is 10%.



### **3. CREATING LIENS ON ASSETS**

#### **3.1 Is it possible to obtain a lien on all existing and future assets of a business entity with a single security document, such as an enterprise mortgage?**

It is possible to obtain a lien on all existing and future assets of a business entity with a single security document. This can take the form of a debenture with a fixed charge over assets such as plant and machinery and accounts receivable and a floating charge over inventory, which are allowed to be used and traded in the normal course of business.

#### **3.2 How is a lien on receivables created? Can future receivables be covered in the initial grant of security or are periodic updates to the documentation necessary? Is it necessary to notify account debtors in order to create the lien, or is it advisable to give such notice? Is a notice required for each receivable from the same account debtor, or is a single notice sufficient for all present and future receivables from the same account debtor? Are restrictions on the creation of liens on receivables enforceable?**

##### **(i) Creation**

Security over receivables may be created by way of a:

- (a) mortgage, which takes the form of an assignment of the receivables and which is
- a legal assignment if the written and notice requirements are met (see paragraph 3.2(iii) below); or
  - an equitable assignment if
    - the written and notice requirements are not met (see paragraph 3.2(iii) below); or
    - the mortgagor's interest in the asset is itself equitable; or
    - the agreement to create a legal mortgage in the future or relates to a future receivable;
- whereby the equitable mortgage loses priority to a subsequent legal mortgage if the subsequent legal mortgagee is a purchaser for value in good faith without actual or constructive notice;
- (b) fixed or floating charge, whereby the floating charge enables the chargor to continue dealing with the charged assets but not the fixed charge.

##### **(ii) Future Receivables and Updates**

Future receivables can be covered in the initial grant of security and periodic updates to the documentation are not necessary for the security to be effective vis-à-vis such future receivables.

##### **(iii) Notice**

- (a) If a legal assignment is intended to be created, this must be done in accordance with the applicable statutory provision which requires:
- the assignment to be in writing; and
  - written notice of the written assignment to be given to the debtor, the effect of which legal assignment is that the debt may be directly enforced by the assignee against the debtor.



- (b) If the above written and notice requirements are not met, then only an equitable assignment of the debt will come about, in which case it will have to be enforced in the name of the assignor and be subject to equities enforceable by the debtor against the assignor, such as set-off and at least in this respect, it would certainly be advisable to give the debtor notice of the security.

(iv) **Restrictions**

A prohibition against an assignment of the accounts receivable/book debt would be effective between debtor and assignee and a claim directly by the assignee against the debtor in the face of such prohibition can be dismissed.

**3.3 How is a lien on inventory created? Must the lender have possession of the inventory? Can future inventory be covered in the initial grant of security or are periodic updates to the documentation necessary? Are retention of title claims by suppliers commonplace? If so, do they extend to proceeds of the inventory?**

(i) **Creation**

A lien on inventory is typically in the form of a floating charge. Although it is theoretically possible to take a mortgage or fixed charge over inventory, this is subject to the impracticality that any dealing in the inventory would be subject to the prior consent of the lender, which a floating charge would not be.

(ii) **Future Inventory and Updates**

Such a floating charge does not require the lender to have possession of the inventory and can cover future inventory in the initial grant of security without periodic updates to the documentation.

(iii) **Retention of Title**

Retention of title claims by suppliers are commonplace but for such claims to extend to the proceeds of the inventory, a fiduciary relationship must be found to exist so as to enable the supplier/owner to 'follow' the inventory as transformed into cash. Such fiduciary relationship does not ordinarily arise under a contract for sale unless there is specific agreement to this effect and which obliges the buyer to keep the proceeds separately.

**3.3 How is a lien on equipment created? Must the lender or its agent have possession of the equipment? Can after-acquired equipment be covered in the initial grant of security or are periodic updates to the documentation necessary?**

(i) **Creation**

- (a) Security over equipment may be created, without the need for the lender to have possession of the equipment, by way of a mortgage or a fixed or floating charge.
- (b) To the extent that the borrower does not need reserve the right to deal with the charged equipment, a fixed charge is more commonly provided in relation to equipment than to inventory. Such fixed charge requires the lender to exert control over the charged equipment such that the borrower would not be free to deal with it without the lender's consent. For this purpose, it is important to evidence such control both at the

documentary level (as in a detailed description of the equipment with identified serial numbers) as well as in practice, to ensure the physical existence of the equipment and compliance with the charge.

(ii) **Future Equipment and Updates**

It is possible to create a charge over future equipment which is acquired after the date of creation of the charge, without the charge document itself having to be periodically updated along with the acquisition of such future equipment. The charge can be framed such that it attaches to new and additional equipment from the moment of its acquisition by the debtor without any new act of transfer.

**3.5 How is a lien on shares created? Are there any issues related to share pledges of which foreign lenders should be aware?**

(i) **Creation**

- (a) A lien over shares can be created by way of:
- a legal mortgage, which entails a transfer of legal title to the shares; or
  - an equitable mortgage or charge which does not entail such transfer of legal title, and which can allow the mortgagor to continue to receive notices or dividends as a shareholder.
- (b) The mortgage is typically accompanied by the owner of the shares delivering up and placing in the possession of the mortgagee, the share certificate and an executed blank transfer form, which may be completed if the security is enforced.
- (c) It is advisable to run a check on the memorandum and articles of association of the company in which the shares are issued to determine whether there are any provisions prohibiting the creation of a lien over the shares or containing restrictions on the transfer of the shares in a manner that might effectively prevent the mortgagee from meaningfully realizing the security should the need arise.

(ii) **Shares Listed on Singapore Exchange**

Where security is to be taken over shares listed on the Singapore Exchange Limited (which adopts a scripless trading system), the following are notable:

- (a) documents of title to such shares are deposited with a central depository (“**Central Depository**”) which operates the central depository system for the holding and transfer of the shares on a book-entry basis, viz. the shares are registered in the name of the Central Depository or its nominee and are transferable by book-entry in the registry maintained by the Central Depository and not by way of an instrument of transfer;
- (b) book-entry shares can only be deposited with the Central Depository by a person who has an account directly with the Central Depository (“**Account Holder**”) or with a depository agent but not with a sub-account holder;
- (c) within the restrictions of the above system, security over such scripless shares can be created by -
- statutory security - this requires the lender taking the security to be either an Account Holder or a depository agent itself, must be effected under a prescribed

form and poses several restrictions (such as in relation to the rights of the security-holder), all of which do not endear itself as a popular form of security; or

- common law security - this is more widely adopted and involves the following
  - the lender and the grantor of the security each opens a sub-account with a depository agent (selected by the lender);
  - the lender and the grantor agree that the grantor will charge in favour of and assign to the lender all of its rights, title and interests in its sub-account with the depository agent, together with all of its book-entry shares held in its sub-account;
  - notice of the assignment is given to and acknowledged by the depository agent, pursuant to which the lender (as assignee) is entitled to instruct the depository agent to transfer the grantor's scripless shares to the lender's sub-account.

### 3.6 **Formal Requirements: Must security documents be notarized? Translated?**

Notarisation of security documents is not necessary. As to language, although Malay, Tamil and Mandarin are also official languages in Singapore, English is the language of business and commerce in Singapore. Where official filing, communication or registration of information is required, such as in relation to the registration of charges (see paragraph 4.2 below), this will have to be done in the English language.

## 4. **PRIORITY**

### 4.1 **How does your legal system establish the priority of the rights of a secured creditor relative to other secured creditors?**

Subject to compliance with registration requirements (see paragraph 4.2 below), priority is determined by the date of creation of the security on the principle that first in time prevails and the following essential common law rules of priority:

#### (i) **As Between Fixed Charges**

a legal charge ranks ahead of an equitable charge (unless the equitable charge was created first and the legal charge knew of the earlier equitable charge); and

#### (ii) **As Between Fixed Charge and Floating Charge**

a fixed charge ranks ahead of a floating charge, even where the fixed charge is created after and with notice of the earlier floating charge (unless the earlier floating charge is created with a negative pledge which the later fixed charge has notice of, in which case the subsequent fixed charge will be postponed to the floating charge).

### 4.2 **If there is a registration system for liens, is it necessary to register the entire security document or merely a notice of the lien? Are receivables, inventory and equipment all covered by this system? How reliable is the filing system? Is the registry available to be searched by prospective lenders? Does the date of registration establish the date of priority relative to other secured claims? Are there costly registration fees? If there is no filing system, how is priority determined?**

(i) **Charges Created by Singapore Companies**

(a) **Registration Requirement**

Where a Singapore company creates a:

- floating charge;
- charge to secure debentures;
- charge on shares, chattels, real estate, receivables, calls made but not paid, goodwill, patents, patent licences, trade mark, copyright or copyright licence or aircraft (although from 1 March 2009, if the charge over aircraft is capable of being registered with the International Registry pursuant to the Convention on International Interests in Mobile Equipment, or the Capetown Convention, then it would not be registrable with ACRA – see paragraph 8.1(ii) below)

it must register, with payment of a nominal registration fee -

- a statement of the particulars of the charge (but without the charge document being required nor possible to be filed);
- with the Accounting and Corporate Regulatory Authority (“ACRA”);
- within 30 days of its creation of the charge.

(b) **Effect of Non-Registration**

Failure to register the charge within 30 days of its creation (so far as security on the company’s property or undertaking is conferred by the charge) will cause the charge to be void against the liquidator and any creditor of the company.

(c) **Searches and Reliability**

The registry of charges maintained by ACRA is publicly searchable (online) and generally reliable. Registration is deemed to give constructive notice to the world of the existence of the charge.

(c) **Priority**

As long as the charge is registered within the 30-day time limit after the creation of the charge, the date of creation itself will determine priority, subject to the rules of priority discussed at paragraph 4.1 above.

(ii) **Intellectual Property Charges**

Although charges which are registrable with ACRA include charges over patents and trade marks owned by a Singapore company (which could include patents and trade marks outside Singapore), to the extent that a charge relates to a patent, trade mark or industrial design which is registered or for which registration has been applied in Singapore such a charge would be registrable with the Intellectual Property Office of Singapore, failing which:

- (a) the charge relating to the trade mark or design would not be effective against a person acquiring a conflicting interest to the trade mark or design respectively, without knowledge of that charge; and
- (b) the charge relating to the patent would not be effective against a person who acquires a subsequent interest in the patent.

## 5. **GUARANTEES**

### 5.1 **Are there any restrictions on the ability of a domestic company to guaranty a loan made to its parent or affiliate?**

#### (i) **Companies Act Prohibition/Exception**

Under the Singapore Companies Act:

- (a) it is unlawful for a company (other than an exempt private company) to issue a corporate guarantee to secure a loan to another company if its director/s alone or together has/have interest in at least 20% of shares in that other debtor company; but
- (b) this prohibition does not apply to a corporate guarantee issued by a subsidiary for a loan to its parent company or another subsidiary of its parent company.

#### (ii) **Corporate Benefit**

Subject to the above statutory restriction, the Singapore subsidiary is not prevented from issuing an upstream corporate guarantee for a loan to its parent or a side-stream corporate guarantee for a loan to its related company which is another subsidiary of its parent company.

That said, in so issuing a corporate guarantee, the directors of the Singapore subsidiary must do so in the best interests (or for the “corporate benefit”) of the subsidiary and not the group of which it is a member. This does not necessarily prevent the subsidiary from considering its wider interests as a member of the group. However, the “corporate benefit” may be more easily established where a holding company issues a guarantee for the obligations of its subsidiary, than where a subsidiary issues a guarantee for a loan to its parent company, unless the subsidiary is itself receiving the proceeds of the loan, such as through inter-company loans. Failure of the directors of the subsidiary to act in the best interests of the subsidiary in issuing the guarantee or the directors otherwise issuing the guarantee for an improper or unauthorised purpose, does not necessarily invalidate the guarantee but may be voidable against the lender/beneficiary of the guarantee where the lender/beneficiary of the guarantee knows of or has reason to inquire into such circumstances of its issuance.

#### (iii) **Financial Assistance**

The prohibition against a company providing financial assistance for the acquisition of shares in its holding company, extends to the giving of such financial assistance by the issuance of a guarantee or other security for a loan to such holding company. However, such prohibition:

- (i) does not apply to a guarantee given by a subsidiary “in good faith and in the ordinary course of commercial dealing”; and
- (ii) may, in any event, be “white washed” (and be thereby legitimised) by compliance with the applicable conditions and formalities such as the issuance of the requisite notices and solvency statement and passing of a special resolution and related steps.

## 6. **WORKOUTS**

### 6.1 **Are there recommended strategies with respect to distressed debtors at risk of entering an insolvency proceeding?**



A distressed debtor seeking temporary respite from its multiple creditors and liabilities, or indeed creditors wanting to salvage the company to secure the repayment of its debt, may apply to the court for judicial management. There are occasions when a company faces severe financial difficulties, but which may nonetheless have a good chance of being nursed back to health because its business fundamentals are still very strong. In such a situation, it would be a pity if the company is forced to a premature end by creditors who petition for the company's winding up. In essence, a judicial management order will have the effect of creating a "moratorium" during which creditors are not allowed to take further actions to enforce their rights against the company. The company will then use this time to think of ways to rehabilitate the company, including effecting a scheme of arrangement (see paragraph 6.2 below) to do so. Although an eventual winding up is not out of the question, judicial management may provide for a better realization of assets.

## 6.2 Are consensual workout agreements common in your country?

- (i) Consensual workout agreements can be done through schemes of arrangement. An obvious route that may be taken by a company that wishes to avoid liquidation is to negotiate compromises and settlements with all its creditors. In practice, this may not be easy to achieve as it would require that the company obtains the agreement of each and every creditor.
- (ii) The law redresses this difficulty by allowing the company to propose a scheme of arrangement sanctioned by the court under the Companies Act. The advantage of such a scheme is that it enables a company to propose a compromise that would bind all creditors (and members) without requiring all of their approval. The procedure under such a scheme involves the following:
  - (a) company holds a court-ordered meeting for creditors;
  - (b) scheme of arrangement is approved by -
    - a majority in numbers (of the creditors) representing 3/4 in value (of the total debt outstanding);
    - court approves scheme;
  - (c) court order is lodged with ACRA.
- (iii) Because the process also applies to members, it may also be used to approve a scheme that is aimed at (fundamentally) restructuring the rights of the company's members (e.g. through mergers, reorganization of share capital etc).

## 6.3 What types of third party workout/insolvency advisors or consultants are active in your market?

- (i) There are many insolvency firms active in the market and they take the appointment as liquidator/administrator/receiver/supervisor of an insolvency proceeding. Players include PwC PricewaterhouseCoopers Singapore, Deloitte and Touche, Ernst & Young and nTan Corporate Advisory Pte Ltd. They provide services such as company strike-off, members' voluntary liquidation, creditors' voluntary liquidation, compulsory court liquidation, receivership, scheme of arrangement, judicial management etc.
- (ii) In 2006, Insolvency Practitioners Association of Singapore Limited ("IPAS") was established with the Institute of Certified Public Accountants of Singapore (ICPAS) and the Law Society of Singapore as founding members to, amongst other things:

- (a) provide a corporate identity and an organisation for insolvency professionals;
- (b) set standards for the insolvency profession;
- (c) regulate and exercise professional supervision over insolvency practitioners;
- (d) support and advance the status and interest of insolvency professionals;
- (e) provide recognized qualifications for persons engaged in the practice of insolvency and protect the character of the insolvency profession;
- (f) frame and establish rules for observance in matters pertaining to codes of professional conduct and practice and the award of certificates and qualifications.

## 7. **ENFORCEMENT**

### 7.1 **Please describe the procedure by which an asset-based lender would realize upon its security. Is a court proceeding required or is a non-judicial proceeding available? What is the typical timing for an enforcement proceeding?**

- (i) The enforcement procedure depends on the nature and terms of the security, and may or may not necessarily involve court proceedings. If the terms of the loan or security provide for certain rights to be exercised upon an event of default arising, such rights may be enforced as a matter of contract without court proceedings and clearly this would be more immediate than where court proceedings are involved. However, if the rights as asserted are challenged or ignored and court proceedings are thereby necessitated, the contested claim could take anything from 6 to 12 months to get to trial if not earlier resolved.
- (ii) As an illustration of the ways in which enforcement can take place, a receiver may be appointed in one of 3 ways:
  - (a) by the lender (or its trustee) under a power contained in the loan or security agreement;
  - (b) under a statutory power, such as pursuant to the Conveyancing and Law of Property Act in relation to a mortgage over land, in respect of which the mortgage has a statutory power to appoint a receiver of the income of the mortgaged property if the mortgage money has become due; or
  - (c) by the court upon the application of the lender (or its trustee), and the court may appoint a receiver even if the security has not yet become enforceable, the basis of this being that the court has power to protect lenders if their position is in jeopardy i.e. when there is a danger of the assets covered by their charge being dissipated.

### 7.2 **How reliable is the court system? Does this vary by state or region? Are foreign lenders treated the same as a domestic lenders in court proceedings? Can a lender enforce a judgment from a foreign court in your jurisdiction?**

#### (i) **Court System**

Singapore is a city-state, with a single hierarchical court system comprising the Subordinate Courts (comprising, *inter alia*, the Magistrates' Courts and District Courts) and the Supreme Court (comprising the High Court and the Court of Appeal), with the highest court being the

Court of Appeal. Constitutionally, the judiciary acts independently of and is separate from the executive/Government and the legislature/Parliament and boasts a reliable and modern court system.

(ii) **Foreign Lenders**

Foreign lenders are treated the same as domestic lenders in court proceedings, save that (as mentioned at paragraph 2.1(iii) above), a defendant who has been sued by a foreign plaintiff is entitled to apply for and may be granted an order by the court compelling such foreign plaintiff to put up security for the costs of the proceedings commenced by the plaintiff, should the foreign plaintiff fail in its action.

(iii) **Foreign Judgments**

A foreign judgment is not directly enforceable in Singapore. However, a judgment of issued out of:

- (a) the United Kingdom and certain Commonwealth countries such as Australia, Brunei, India (except Jammu and Kashmir) Malaysia, New Zealand, Pakistan and Sri Lanka, as well as Hong Kong (being no longer part of the Commonwealth), may be simply registered with the High Court and be thereafter enforceable as if it were issued by a Singapore court; and
- (b) any other country may be relied on as a basis to found a cause of action in a Singapore court proceeding.

**7.3 Do insolvency proceedings contemplate reorganization, or merely liquidation? Is an asset-based lender's lien recognized in an insolvency proceeding? Is there a stay or moratorium on the exercise by an asset-based lender of its remedies? Is the borrower permitted to use the lender's collateral during the insolvency proceeding, and if so, is the lender compensated? How do companies finance themselves during an insolvency proceeding? What are potential theories for the insolvency official or other creditors to seek to void or invalidate the lien or claim of an asset-based lender?**

(i) **Liquidation vs. Reorganisation**

Insolvency proceedings are not confined to liquidation, but can involve reorganization through judicial management, which seeks to achieve the survival of the company or its business and may involve a scheme of arrangement (see paragraph 6.2 above), without necessarily leading to the company's liquidation. These are distinguished from a company in receivership, which also does not inevitably lead to the company's demise and occurs when a creditor enforces its security to get its debt repaid, at the end of which the company remains in existence and may continue its business if liquidation does not set in.

(ii) **Secured Interest in Insolvency**

Subject to the moratorium (see below) and possible avoidance (see below), an asset-based lender's lien is recognized in an insolvency proceeding. The borrower is not permitted to use the lender's secured collateral during the insolvency proceedings.

(iii) **Moratorium**

- (a) If the company is put under judicial management, the effect is that during the period while the judicial management order is in force, no steps shall be taken to enforce security over the company's property or to repossess any goods under any hire-purchase agreement, chattels leasing agreement, or retention of title agreement except with the consent of the judicial manager or leave of the Court. This is an automatic moratorium that prevents creditors from enforcing their security over the company without leave from the court.
- (b) Upon commencement of a company's winding up, any disposition of the company's property is void, unless the court otherwise orders. The rationale of this section is to prevent the improper alienation and dissipation of the property of the company before the petition can be heard. The effect of this rule is that a disposition of the company's property after presentation of a petition for winding up is *void ab initio* unless the court validates it. The section only invalidates dispositions; recovery of property dissipated is a matter for remedies provided under general law. Any person who takes any part of a company's property after the presentation of a winding up petition thus runs the risk that the disposition will be avoided. In such an event, the creditor would have to return the property and prove in the liquidation as an ordinary unsecured creditor.

(iv) **Avoidance**

- (a) In a winding up proceeding, a security interest may be subject to attack or avoidance on the ground that there was "undue preference" if created pursuant to a transaction entered into:
- at an undervalue within the period of 5 years before the commencement of winding up; or
  - based on the company having given unfair preference within the period of 2 years before the commencement of winding up.
- (b) Where there is such undue preference, the liquidator may apply for an order to be made to avoid such an antecedent transaction, which must then be reversed and the assets regained to be distributed to creditors in the right priority.

**7.4 What claims of other creditors (e.g., costs of insolvency, fees and expenses of insolvency administrators, taxes, employees, landlords, environmental claims, suppliers, unsecured creditors) may have priority over the claims of an asset-based lender in an insolvency proceeding? Does the law provide for a carve-out from the lender's collateral in favor of other creditors?**

In a company's winding up, there is no carve-out from a lender's collateral in favour of other creditors. Creditors with fixed charges will be paid out of the assets that comprise their securities, only after which will the remainder be distributed towards payment of debts in the following order of priority:

- (i) the preferred debts in the following order of priority -
- (a) expenses of the winding up;
- (b) wages or salary of any employee up to 5 months' salary or SGD7,500 whichever is lesser;

- (c) employee retrenchment benefits up to 5 months' salary or SGD7,500 whichever is lesser;
- (d) work injury compensation;
- (e) employees' superannuation or provident funds;
- (f) employees' vacation leave;
- (ii) debts under any charge created as a floating charge;
- (iii) all taxes assessed as due;
- (iv) debts of other unsecured general creditors, which would include the debts of any secured creditor in relation to any amount of debt in excess of its realized security

**7.5 With respect to the collection of receivables, what is the process that foreign lenders or a foreign factor undertake to collect receivables from domestic account debtors? Will a local court recognize the rights of a U.S. secured creditor established only under U.S. law and not under local law? Is a court proceeding required or is a non-judicial proceeding available? What is the typical timing for an enforcement proceeding?**

- (i) A foreign lender or foreign factor seeking to enforce the collection of receivables from local debtors which have been charged or assigned in its favour, will:
  - (a) need to ensure that its security has been registered to the extent that the chargor or assignor of the debts is a Singapore company (see paragraph 4.2 above), failing which it cannot enforce the security against the liquidator or any other creditor of the chargor or assignor; and
  - (b) be able to claim payment of the receivables directly in its name to the extent that the receivables were legally assigned with the written and notice requirements of the legal assignment having been met (see paragraph 3.2 above); otherwise, with an equitable assignment, it can only collect the receivables in the name of the assignor and be subject to the rights that the debtor may have against the assignor, such as the right of set off.
- (ii) While the foreign lender's claims over receivables from domestic account holders may be enforced without necessarily commencing court proceedings, to the extent that such claims are challenged or ignored and the foreign lender is compelled to prove these claims in the local courts, it will need to do so in compliance with local law and not U.S. law. Such proceedings could take anything from 6 to 12 months to get to trial if the matter is not earlier resolved by the parties.

**8. RECENT DEVELOPMENTS**

**8.1 Are there any recent or pending developments in the legal or business environment that affect asset-based lending?**

(i) **Moneylenders Act**

The previous Moneylenders Act was revamped with effect from 1 March 2009 with a view to

addressing the problem of recalcitrant debtors seeking to avoid their obligations by accusing their creditors of being unlicensed moneylenders, to be more flexible and modernise moneylending practices, to bring the regulation of moneylenders more in line with other major lenders, such as banks, and allow moneylenders to take a more respectable place in the financial services sector and compete on a more level playing field with other lenders. Key highlights of the new Moneylenders Act are as follows:

- (a) by increasing the number of lending activities which do not require to be licensed, the new Act reduces the potential for the abuse of the unlicensed moneylender defence. In particular, the new Act introduced the concept of “Excluded Moneylenders” (see paragraph 2.1(i) above);
- (b) the new Act liberates moneylenders from many of the previous constraints, such as in relation to operating from more than one place of business, how their books have to be kept, charging of compound interest, advertising and payment methods.

(ii) **International Interest in Aircraft Equipment Act**

- (a) Singapore acceded to the Convention on International Interests in Mobile Equipment and the Protocol to the Convention on International Interests in Mobile Equipment on Matters Specific to Aircraft Equipment (“**Convention and Protocol**”), on the back of which she passed the International Interest in Aircraft Equipment Act (“**International Aircraft Act**”) with effect from 1 May 2009, to:
  - facilitate a common legal framework on the creation and enforcement of security interest over aircraft and aircraft equipment among Contracting States;
  - overcome the problem of obtaining secure and readily enforceable rights in aircraft equipment as these items are of high value, yet are mobile and without any fixed location.
- (b) Pursuant to the Convention and Protocol, an electronic International Registry (currently out of Dublin, Ireland) has been established for the registration of international interests in aircraft and aircraft equipment, to give public notice of such an interest to third parties and to protect the priority of the holder of that interest in insolvency proceedings against the debtor. This regime is intended to provide greater confidence for creditors to grant credit on highly mobile capital-intensive assets and enhance the credit rating of equipment receivables.
- (c) With the reference to the International Registry, the International Aircraft Act provides that a charge over aircraft otherwise required to be registered with ACRA (see paragraph 4.1(ii) above), would not need to be so registered with ACRA to the extent that it is registrable with the International Registry under the International Aircraft Act. However, with respect to non-consensual rights or interests, Singapore has declared in its accession to the Convention and Protocol that such rights and interests will have priority over any registered international rights, so that these rights or interests as recognized and enforceable under Singapore law would have priority over a registered international interest in that same aircraft or aircraft equipment.