

IN THE SUPREME COURT OF THE REPUBLIC OF SINGAPORE

REGISTRAR'S CIRCULAR NO. 1 OF 2021

**ISSUANCE OF THE GUIDE FOR THE CONDUCT OF
APPLICATIONS FOR MORATORIA UNDER SECTIONS 64 AND 65
OF THE INSOLVENCY, RESTRUCTURING AND DISSOLUTION ACT 2018**

The Guide for the Conduct of Applications for Moratoria under Sections 64 and 65 of the Insolvency, Restructuring and Dissolution Act 2018 (the “**Guide**”) sets out the case management features and specialist practices for the conduct of applications under sections 64 and 65 of the Insolvency, Restructuring and Dissolution Act 2018 (“**IRDA**”).

2. The Guide, which supplements the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 (G.N. No. S 603/2020) (the “**Rules**”) and any practice directions that are issued under rule 4 of the Rules, applies to every application under section 64 or 65 of the IRDA with effect from 15 February 2021.

3. The Rules and practice directions will take precedence over the Guide, if there is any inconsistency.

Dated this 10th day of February 2021.



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REGISTRAR
SUPREME COURT

GUIDE FOR THE CONDUCT OF APPLICATIONS FOR MORATORIA UNDER SECTIONS 64 AND 65 OF THE INSOLVENCY, RESTRUCTURING AND DISSOLUTION ACT 2018

A. *Introduction*

1. With the commencement of the Insolvency, Restructuring and Dissolution Act 2018 (“IRDA”) on 30 July 2020:
 - (a) A company (“**Subject Company**”) may apply for an order to restrain proceedings, *etc.*, against itself under section 64 of the IRDA. Prior to 30 July 2020, a Subject Company could apply for such an order under section 211B of the Companies Act (Cap. 50, 2006 Rev. Ed.) (as in force immediately before that date). Unless otherwise indicated herein, “**Subject Company’s Application for Moratorium**” refers to an application made under section 64 of the IRDA.
 - (b) A subsidiary, a holding company or an ultimate holding company (each referred to herein as “**Related Company**”) of the Subject Company in respect of which the Court has made an order under section 64 of the IRDA, may apply for an order to restrain proceedings, *etc.*, against itself under section 65 of the IRDA. Prior to 30 July 2020, a Related Company could apply for such an order under section 211C of the Companies Act (as in force immediately before that date). Unless otherwise indicated herein, “**Related Company’s Application for Moratorium**” refers to an application made under section 65 of the IRDA.
2. The Registrar issues this guide for the conduct of a Subject Company’s Application for Moratorium and a Related Company’s Application for Moratorium.

B. *Filing of a Subject Company’s Application for Moratorium*

3. A Subject Company’s Application for Moratorium is to be filed by way of an *ex parte* originating summons together with a supporting affidavit. The Subject Company is to ensure that it satisfies the definition of “company” in section 63(3) of the IRDA and that all applicable conditions and requirements under section 64 of the IRDA are satisfied. Due consideration should also be given to the requirements set out in *Re IM Skaugen SE and other matters* [2019] 3 SLR 979 (“*Re IM Skaugen*”).
4. Upon the filing of a Subject Company’s Application for Moratorium, unless the Court orders otherwise, the Subject Company (a) 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 Subject Company¹, and (b) should also send a notice of the

¹ See section 64(3)(b) of the IRDA.

application to every other creditor of the Subject Company. See paragraph 10(b) below for more information on “Notice requirements”. If a request for copies of the application and supporting affidavit is made by a creditor of the Subject Company, the Subject Company should provide copies of the same to the creditor as soon as practicable.

C. *Filing of a Related Company’s Application for Moratorium*

5. As with a Subject Company’s Application for Moratorium, a Related Company’s Application for Moratorium is to be filed by way of an *ex parte* originating summons together with a supporting affidavit. The Related Company is to ensure that it satisfies the definition of “company” in section 63(3) of the IRDA and that all applicable conditions and requirements under section 65 of the IRDA are satisfied.
6. A Related Company’s Application for Moratorium should be filed concurrently with a Subject Company’s Application for Moratorium, and will be fixed for hearing together with the Subject Company’s Application for Moratorium.
7. Upon the filing of a Related Company’s Application for Moratorium, unless the Court orders otherwise, the Related Company (a) must send a notice of the application to each creditor of the Related Company who will be affected by an order under section 65(1) of the IRDA and who is known to the Related Company², and (b) should also send a notice of the application to every other creditor of the Related Company. See paragraph 10(b) below for more information on “Notice requirements”. If a request for copies of the application and supporting affidavit is made by a creditor of the Related Company, the Related Company should provide copies of the same to the creditor as soon as practicable.

D. *Pre-Trial Conferences*

8. The 1st Pre-Trial Conference (“**PTC**”) will be conducted by an Assistant Registrar (“**PTC Registrar**”) usually within 1 week of the filing of the Subject Company’s Application for Moratorium and/or the Related Company’s Application for Moratorium. Subsequent PTCs may be fixed as may be necessary.
9. Notice of each PTC should be given (as the case may be):
 - (a) By the Subject Company to **ALL** creditors of the Subject Company, regardless of whether the creditor is meant to be bound by the intended or proposed compromise or arrangement; and/or

² See section 65(3)(b) of the IRDA.

- (b) By the Related Company to **ALL** creditors of the Related Company, regardless of whether the creditor will be affected by an order under section 65(1) of the IRDA.

10. The following matters will usually be dealt with at the 1st PTC:

(a) Statutory requirements

- (i) For a Subject Company's Application for Moratorium, the Subject Company is to prepare and tender to Court a document ("**Subject Company's Memorandum**"), a template of which is set out in **Appendix A** of this guide, which is to be filed 1 working day before the 1st PTC to show that the Subject Company is a "company" as defined in section 63(3) of the IRDA, and the Subject Company's compliance with all applicable conditions and requirements of section 64 of the IRDA.
- (ii) For a Related Company's Application for Moratorium, the Related Company is to prepare and tender to Court a document ("**Related Company's Memorandum**"), a template of which is set out in **Appendix B** of this guide, which is to be filed 1 working day before the 1st PTC to show that the Related Company is a "company" as defined in section 63(3) of the IRDA, and the Related Company's compliance with all applicable conditions and requirements of section 65 of the IRDA.

(b) Notice requirements

- (i) In respect of the notice requirements under section 64(3)(a) and section 65(3)(a) of the IRDA, the notice of the application in the *Gazette* and in at least one English local daily newspaper may be published after the hearing date has been fixed at the 1st PTC. Directions will be given at the 1st PTC for the Subject Company and/or the Related Company to file a supplemental affidavit to confirm that all the notice requirements under section 64(3) and/or section 65(3) of the IRDA have been complied with.

(c) Other related matters / applications

- (i) Parties should inform the PTC Registrar of any related matters / applications filed in respect of the Subject Company and/or the Related Company which should be considered in the fixing of the Subject Company's Application for Moratorium and/or the Related Company's Application for Moratorium. This is to facilitate the fixing of all related matters / applications before a single Judge, where possible and appropriate.

(ii) Such related matters / applications may include:

- (1) any application (whether pending or concluded) filed under section 210 of the Companies Act or sections 211B to 211J of the Companies Act (as in force immediately before 30 July 2020) and/or sections 64 to 72 of the IRDA in respect of the Subject Company and/or the Related Company, including any application (whether pending or concluded) filed by the Subject Company under section 211B(1) of the Companies Act (as in force immediately before 30 July 2020) or section 64(1) of the IRDA within a 12-month period immediately before the date of the Subject Company's Application for Moratorium;
- (2) any application (whether pending or concluded) filed in respect of the Subject Company and/or the Related Company for judicial management (whether under section 227A of the Companies Act (as in force immediately before 30 July 2020) or section 90 of the IRDA);
- (3) any application (whether pending or concluded) filed in respect of the Subject Company and/or the Related Company for winding up (whether under section 253 of the Companies Act (as in force immediately before 30 July 2020) or under section 124 of the IRDA); and
- (4) any insolvency or restructuring application (whether pending or concluded) filed in a court of any foreign country by the Subject Company and/or the Related Company and/or any company in the group of companies which the Subject Company is, or the Subject Company and the Related Company are, a part of.

(d) Interlocutory applications

- (i) Parties should update the Court as to any potential interlocutory application(s) that parties intend to file in the Subject Company's Application for Moratorium and/or the Related Company's Application for Moratorium. The PTC Registrar will, if appropriate, give directions in respect of the filing of such application(s) and any affidavits.

(e) Milestone schedule

- (i) The Subject Company and/or the Related Company making the Application for Moratorium will be directed to prepare a milestone

schedule, which is to be presented to the Judge as well as all other interested parties, setting out the timelines for key milestone events in the restructuring exercise, including any foreseeable application(s) to be filed. This will enable the Judge to consider and make appropriate directions for the filing of any such application(s) and any affidavits.

(f) Hearing dates

- (i) Parties should work with the Court to ensure the expeditious disposal of the Subject Company's Application for Moratorium and/or the Related Company's Application for Moratorium.
- (ii) In general,
 - (1) a Subject Company's Application for Moratorium will be fixed for hearing within 30 days after the filing of that application, *i.e.*, on a date before the expiry of the "automatic moratorium period" as defined in section 64(14) of the IRDA; and
 - (2) a Related Company's Application for Moratorium will be fixed for hearing together with the related Subject Company's Application for Moratorium.
- (iii) Parties are to ensure that they have the available dates of their respective lead counsel at the 1st PTC to facilitate the fixing of hearing dates. While the Court will endeavour to accommodate the availability / commitments of lead counsel, lead counsel's assistance will be sought if any adjustment to their schedule is required.

(g) Cross-border issues

- (i) Where parties are aware that cross-border issues may arise, parties are to consider the following published by the Judicial Insolvency Network ("**JIN**") (please refer to Registrar's Circular No. 1 of 2017 and Registrar's Circular No. 7 of 2020):
 - (1) the "Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters" ("**JIN Guidelines**"); and
 - (2) the "Modalities of Court-to-Court Communication" ("**JIN Modalities**").

- (ii) Parties are to update the PTC Registrar as soon as practicable as to whether any aspect of the JIN Guidelines and/or the JIN Modalities will be reflected in a protocol or Order of Court to assist with the efficient and effective management of cross-border proceedings.

E. Hearing of the Subject Company's Application for Moratorium and/or the Related Company's Application for Moratorium

- 11. As a Subject Company's Application for Moratorium and a Related Company's Application for Moratorium are *ex parte* applications, solicitors are to ensure that full and frank disclosure of all material facts is made in these applications and at the hearing of these applications, whether or not the application is attended or opposed by creditors.
- 12. At the hearing of the Subject Company's Application for Moratorium, parties should be prepared to address the Judge on the following matters:
 - (a) Undertaking to file an application under section 210(1) of the Companies Act or an application under section 71(1) of the IRDA
 - (i) One of the conditions to be satisfied under section 64(2)(b) of the IRDA is that the Subject Company makes, or undertakes to the Court to make, as soon as practicable:
 - (1) an application under section 210(1) of the Companies Act for the Court to order to be summoned a meeting of the creditors or class of creditors in relation to the compromise or arrangement proposed or intended to be proposed; or
 - (2) an application under section 71(1) of the IRDA to approve the compromise or arrangement proposed or intended to be proposed.
 - (ii) The undertaking, in the terms as provided in section 64(2)(b) of the IRDA, is to be set out in the supporting affidavit. The attention of the Subject Company and the director who swears or affirms the affidavit is drawn to section 4(1)(b) of the Administration of Justice (Protection) Act 2016, which provides that it is a contempt of court to intentionally breach any undertaking given to a court.
 - (iii) The Subject Company should be prepared to provide an indication of when the application under section 210(1) of the Companies Act or the application under section 71(1) of the IRDA will be filed.

(b) Moratorium

- (i) The supporting affidavit in respect of the Subject Company's Application for Moratorium should address specifically the period of the moratorium and justify that with evidence, particularly bearing in mind the time that has elapsed during the automatic moratorium period mentioned in section 64(8) of the IRDA.
- (ii) The Subject Company should note that the purpose of a moratorium under section 64(1) of the IRDA is not for a Subject Company to halt all work on a proposed or intended compromise or arrangement from the time that the Subject Company's Application for Moratorium is filed until that application is heard. The Court will expect the Subject Company to have used the automatic moratorium period to advance discussions with creditors to establish support for the proposed or intended compromise or arrangement and/or to come to an agreement on the outline of the said compromise or arrangement.
- (iii) Counsel should be prepared to justify every element of the order sought, including every element of the moratorium sought. For example, if the Subject Company has no creditors who can appoint a receiver or manager, there is no basis to seek a moratorium under section 64(1)(b) of the IRDA.
- (iv) In addition, there should be prayers in the *ex parte* originating summons, supported by evidence in the affidavit, addressing the orders the Court should make under section 64(6) of the IRDA. If the Subject Company intends to seek the exercise of the Court's discretion not to make an order under any limb of section 64(6) of the IRDA, the basis for that should be set out in the supporting affidavit. The supporting affidavit should also address how much time the Subject Company will require to comply in the first instance with sections 64(6)(a), (c) and (d) of the IRDA, and the reasonable intervals thereafter for periodic ongoing compliance.
- (v) A sample order made on a Subject Company's Application for Moratorium is set out in **Appendix C** of this guide.

F. Appeal

13. When filing any appeal against orders made in respect of matters involving a compromise or arrangement (proposed or intended to be proposed) between a Subject Company and its creditors or any class of those creditors, the appellant may wish to consider if it will be necessary to file an application for the hearing of the appeal to be expedited.

G. *Extension of Moratorium*

14. All applications for an extension of a moratorium obtained in a Subject Company's Application for Moratorium or a Related Company's Application for Moratorium should be filed **no later than two weeks before the expiry of the moratorium**. This is to facilitate arrangements by the Court for such extension applications to be dealt with, as far as possible, before the expiry of the moratorium. The Subject Company and the Related Company are to note that any extension application filed less than two weeks before the expiry of the moratorium may result in the assignment of a hearing date after the expiry of the moratorium.

H. *Alternative Dispute Resolution*

15. A Subject Company and its creditors and, where applicable, a Related Company and its creditors, should consider the use of alternative dispute resolution mechanisms to resolve their issues and differences. In this regard, the assistance of an insolvency mediator to develop the compromise or arrangement (proposed or intended to be proposed) is one example of an alternative dispute resolution mechanism: see *Re IM Skaugen*.

Date issued: 10th February 2021

APPENDIX A

**MEMORANDUM FOR A SUBJECT COMPANY’S APPLICATION FOR
MORATORIUM UNDER SECTION 64(1) OF THE IRDA**

Subject to compliance with any other requirements stipulated by any relevant legislation and any applicable practice directions or specific directions given at a PTC on the facts of a particular case, the following information is to be provided by a Subject Company in an application under section 64(1) of the IRDA.

| | Information to be provided | Paragraph number and page number in the supporting affidavit |
|-----|---|---|
| (1) | Confirmation that the Subject Company is not excluded from the definition of “company” under section 63(3) of the IRDA, and is entitled to apply for an order under section 64(1) of the IRDA. | |
| (2) | If the Subject Company is a foreign company, the basis on which it is a “corporation liable to be wound up under this Act” mentioned in section 63(3) read with section 246(1)(d) and section 246(3) of the IRDA. | |
| (3) | Whether any order has been made, or whether any resolution has been passed, for the winding up of the Subject Company. | |
| (4) | The Subject Company’s undertaking to the Court to make as soon as practicable, if it has not already made: (i) an application under section 210(1) of the Companies Act for the Court to order to be summoned a meeting of the creditors or class of creditors in relation to the compromise or arrangement proposed or intended to be proposed; or (ii) an application under section 71(1) of the IRDA to approve the compromise or arrangement proposed or intended to be proposed. | |
| (5) | Whether the Subject Company has made an application under section 210(10) of the Companies Act. | |
| (6) | Whether the Subject Company made an earlier application under section 64(1) of the IRDA or | |

| | Information to be provided | Paragraph number and page number in the supporting affidavit |
|-----|---|---|
| | section 211B of the Companies Act (as in force immediately before 30 July 2020) within the period of 12 months immediately before the date on which the Subject Company's Application for Moratorium is made. | |
| (7) | <p>The date on which notice of the Subject Company's Application for Moratorium was sent to each creditor meant to be bound by the intended or proposed compromise or arrangement and who is known to the Subject Company.</p> <p><i>Note: This information may not be in the supporting affidavit as notice is given after the filing of the said application. However, this notice should be given prior to the 1st PTC and the date on which notice was given to the creditors is to be stated here.</i></p> | |
| (8) | <p>Where the Subject Company has proposed a compromise or arrangement to its creditors:</p> <p>Evidence of support from the Subject Company's creditors for the proposed compromise or arrangement;</p> <p>AND</p> <p>Explanation of how such support would be important for the success of the proposed compromise or arrangement.</p> | |
| (9) | <p>In the alternative, where the Subject Company intends to propose a compromise or arrangement to its creditors:</p> <p>Evidence of support from the Subject Company's creditors for the moratorium sought;</p> <p>AND</p> <p>An explanation of the importance of that support;</p> <p>AND</p> <p>A brief description of the intended compromise or arrangement, with sufficient particulars to enable the Court to assess whether the intended compromise or arrangement is feasible and merits consideration by the Subject Company's creditors.</p> | |

| | Information to be provided | Paragraph number and page number in the supporting affidavit |
|------|--|---|
| | | |
| (10) | A list of every secured creditor of the Subject Company. | |
| (11) | <p>A list of all unsecured creditors who are not related to the Subject Company;</p> <p>OR</p> <p>Where there are more than 20 such unsecured creditors, a list of the 20 unsecured creditors whose claims are the largest amongst all such unsecured creditors.</p> | |
| (12) | If the Subject Company seeks a moratorium to be expressed to apply to any act of any person within the jurisdiction of the Court where the act takes place outside Singapore, the basis on which such moratorium is sought. | |

APPENDIX B

MEMORANDUM FOR A RELATED COMPANY'S APPLICATION FOR MORATORIUM UNDER SECTION 65(1) OF THE IRDA

Subject to compliance with any other requirements stipulated by any other relevant legislation and any applicable practice directions or specific directions given at a PTC on the facts of a particular case, the following information is to be provided by a Related Company in an application under section 65(1) of the IRDA.

| | Information to be provided | Paragraph number and page number in the supporting affidavit |
|-----|---|---|
| (1) | Confirmation that the Related Company is not excluded from the definition of "company" under section 63(3) of the IRDA, and is entitled to apply for an order under section 65(1) of the IRDA. | |
| (2) | If an order has been made under section 64(1) of the IRDA or section 211B of the Companies Act (as in force immediately before 30 July 2020) (" Subject Company's Moratorium "), the date on which that order was made and whether that order is still in force. | |
| (3) | Alternatively, if the Subject Company's Moratorium has not been ordered, the date on which the Subject Company's Application for Moratorium under section 64(1) of the IRDA or section 211B of the Companies Act (as in force immediately before 30 July 2020) was filed and the case number of that application. | |
| (4) | Whether any order has been made, or any resolution has been passed, for the winding up of the Related Company. | |
| (5) | How the Related Company plays a necessary and integral role in the compromise or arrangement relied on by the Subject Company to make the Subject Company's Application for Moratorium. | |
| (6) | How the compromise or arrangement relied on in the Subject Company's Application for Moratorium will be frustrated if one or more actions that may be restrained by an order under | |

| | Information to be provided | Paragraph number and page number in the supporting affidavit |
|-----|--|---|
| | section 65(1) of the IRDA (“ Related Company’s Moratorium ”) are taken against the Related Company. | |
| (7) | Whether the creditors of the Related Company will be unfairly prejudiced if the Related Company’s Moratorium is ordered. | |
| (8) | <p>The date on which notice of the Related Company’s Application for Moratorium was sent to each creditor of the Related Company who will be affected by an order under section 65(1) of the IRDA and who is known to the Related Company.</p> <p><i>Note: This information may not be in the supporting affidavit as notice is given after the filing of the said application. However, this notice should be given prior to the 1st PTC and the date on which notice was given to the creditors is to be stated here.</i></p> | |

APPENDIX C

**SAMPLE ORDER ON A SUBJECT COMPANY’S APPLICATION FOR
MORATORIUM UNDER SECTION 64(1) OF THE IRDA**

UPON the Applicant [making / by counsel today undertaking to the Court in accordance with section 64(2)(b) of the Insolvency, Restructuring and Dissolution Act 2018 (“**IRDA**”) to make as soon as practicable]:

- A. [an application under section 210(1) of the Companies Act for the Court to order to be summoned a meeting of the creditors or class of creditors in relation to the compromise or arrangement mentioned in section 64(1) of the IRDA;] [or]
- B. [an application under section 71(1) of the IRDA to approve the compromise or arrangement mentioned in section 64(1) of the IRDA;]

IT IS ORDERED AS FOLLOWS

- (1) The orders in this paragraph be and are hereby made (“**the Moratorium**”) and shall remain in force for a period of _____ month(s) after the date of this order, unless otherwise extended by the Court:
 - (a) No resolution for the winding up of the Applicant shall be passed;
 - (b) No receiver or manager shall be appointed over any property or undertaking of the Applicant;
 - (c) No proceedings (other than proceedings under section 210 or 212 of the Companies Act, or section 64, 66, 69 or 70 of the IRDA) shall be commenced or continued against the Applicant, except with the leave of the Court and subject to such terms as the Court imposes;
 - (d) No execution, distress or other legal process shall be commenced, continued or levied against any property of the Applicant, except with the leave of the Court and subject to such terms as the Court imposes;
 - (e) No step shall be taken to enforce any security over any property of the Applicant, or to repossess any goods held by the Applicant under any chattels leasing agreement, hire-purchase agreement or retention of title agreement, except with the leave of the Court and subject to such terms as the Court imposes; and
 - (f) No right of re-entry or forfeiture under any lease in respect of any premises occupied by the Applicant shall be enforced (including pursuant to section 18 or 18A of the Conveyancing and Law of Property Act (Cap. 61)),

except with the leave of the Court and subject to such terms as the Court imposes.

- (2) The Applicant shall submit to the Court the following information relating to the Applicant's financial affairs to enable the Applicant's creditors to assess the feasibility of the intended or proposed compromise or arrangement:
 - (a) a report on the valuation of each of the Applicant's significant assets;
 - (b) if the Applicant acquires or disposes of any property or grants security over any property, information relating to the acquisition, disposal or grant of security, such information to be submitted not later than 14 days after the date of the acquisition, disposal or grant of security;
 - (c) periodic financial reports of the Applicant and the Applicant's subsidiaries;
 - (d) forecasts of the profitability, and the cash flow from the operations, of the Applicant and the Applicant's subsidiaries.
- (3) The information under paragraphs 2(a), 2(c) and 2(d) above shall be supplied to the Court by way of an affidavit filed by an officer of the Applicant, such affidavit to be filed by ____ (time) on _____ (date).
- (4) Any creditor of the Applicant shall be entitled to receive an electronic copy of the affidavit filed under paragraph 3 above; and shall be entitled to receive a physical copy of the said affidavit upon tendering to the Applicant the reasonable photocopying charges therefor.
- (5) The Applicant and any creditor or putative creditor of the Applicant is hereby granted liberty to apply.
- (6) There shall be no order as to the costs of this application.