

Vinashin stays afloat - ground breaking English Scheme approved for a Vietnamese restructuring

On September 4, 2013, the High Court of England sanctioned the Scheme of Arrangement (“the Scheme”) proposed by Vietnam Shipbuilding Industry Group (Vinashin) to restructure its defaulted US\$600 million syndicated loan facility. This ruling clears the way for the Vietnamese State Owned Enterprise to complete a restructuring which will allow Vinashin to continue to focus on the operational restructuring initiatives required to drive long term viability of the business and the industry more generally in Vietnam.

In 2008 Vinashin was the fifth-largest shipbuilder in the world employing more than 50,000 people. In December 2010, when it defaulted on payment obligations of the US\$600 million loan (which had been granted in 2007) Vinashin had total liabilities in the order of US\$4.5 billion, which included significant debts to domestic banks. At the time of its default, Vinashin’s liabilities equated to approximately 4.5% of Vietnam’s GDP. Given this context, it is not surprising that the case has attracted an audience, both domestic and international, far larger than the immediate stakeholder constituencies. KPMG in Vietnam has been Vinashin’s sole financial advisor in the restructuring. We have acted as the bridge between Vinashin and some 20 plus international lenders and, together with Mayer Brown JSM, advised Vinashin on international restructuring processes and practices, negotiating deal terms, and then walking Vinashin through the Scheme process including working closely with Government ministries and agencies to negotiate documentation (including a Ministry of Finance guarantee).

The Scheme is a first in Vietnam and represents developments in English Law

Vinashin’s use of an English Scheme of Arrangement, which is an internationally accepted legal process to compromise debts, is a first for a Vietnamese company.

Of even greater significance for the international restructuring community is the acceptance by the English court of jurisdiction, which represents a significant development of the English court’s thinking. As a consequence, we will in all probability see the English courts – already regularly used by European companies as a favourable venue for restructuring by way of, typically, Administration – being used more often as a venue for restructurings of Asian companies.

The Vinashin decision shows that the English courts will:-

- allow foreign companies to make use of an English Scheme of Arrangement where the only connection to the United Kingdom is that the relevant loan facility is governed by English Law; and
- in particular circumstances, the English Court will exercise its discretionary power to stay creditors' legal actions for Summary Judgment in order to allow a Scheme to be promoted.

Intuitively, it seems conceivable that the English court would, in similar circumstances, respond positively to a creditor-led application, either for a scheme or, perhaps, for an Administration Order or some other process available under the UK's Insolvency Act.

A fair deal for the syndicate lenders?

Under the Scheme, each lender's debt will be exchanged for Notes in the value of their pro-rata share of the total Notes to be issued with a principal of approximately US\$626 million. The Notes will i) be issued by a separate company (under the control of the Ministry of Finance), ii) mature in 2025, iii) be guaranteed by the Ministry of Finance, iv) accrue simple interest of 1%p.a, and v) pay principal and accrued interest upon maturity.

Key drivers of the deal structure have been to i) maintain repayment of loan principal in full, ii) create a readily tradable instrument to enable lenders to cash out early and iii) have payment supported by a Government guarantee. Market players and commentators inevitably will have different views on the commercial terms of the deal reached including the value or pricing that the instrument is likely to trade at.

Perhaps the biggest sticking point in reaching a consensus on deal terms had been the different expectations regarding the appropriate level of Government support for any restructuring, as a number of lenders viewed a "Letter of Comfort" issued in favour of Vinashin by the government as promoting the facility to quasi-government debt. In this regard, the Government guarantee was an essential component of the restructuring as, if called upon, it would represent a direct obligation of the state to creditors. Insofar as the Scheme is founded on principals of equality of treatment of all lenders, takes account of the very distressed financial and operational condition of the business, and provides for a Government-guaranteed outcome that is better than would materialise through an insolvent liquidation, then one hopes that the Scheme will at least be perceived-grudgingly or otherwise – as fair.

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Vinashin's restructuring process and the legislative framework for distressed enterprises in Vietnam

As is the case with any developing economy or company seeking to address complex challenges for the first time, there are aspects of Vinashin's restructuring process that could be improved. The education process and lessons learned in tackling Vinashin's debt provide valuable experience and insight in Vietnam that could be applied and refined in restructuring other Vietnamese companies.

As advisers, both KPMG and Mayer Brown JSM, advised Vinashin's management about, and encouraged it to meet, lender expectations of how a restructuring process is conducted internationally. Whilst perfection in this regard was by no means achieved, Vinashin was somewhat closer to this ideal by the end of the process than they were at the beginning. It is to be hoped that future restructurings in Vietnam, if any, will benefit from the acute learning curve that Vietnam has been on through this process.

The extended timetable is not just down to Vinashin. A number of challenges have been faced by the lender group in reaching a consensus firstly amongst the Steering Committee members, secondly with the broader lender group and, finally, with Vinashin. The lender group is diverse in nature and the composition of the Steering Committee (and lender group) changed many times due to factors including debt trading; this exacerbated to the challenge of reaching a consensus.

While Vietnam has had a Bankruptcy Law since 2004, containing many provisions and concepts familiar to other jurisdictions, in practice, Vietnamese Courts only granted decisions to initiate bankruptcy proceedings in 236 cases between 2004 to 2012. The Law provides for Court driven liquidation and rehabilitation procedures to be followed in respect of insolvent debtors. However, to date, there are no known cases of rehabilitation procedures being applied.

A welcome process to reform the Vietnamese Bankruptcy Law is underway which will hopefully improve the ability to implement the provisions in future. Earlier this year the Supreme Court indicated an intention to submit a draft law to the National Assembly for discussion by September 2013.

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Vietnam's commitment to address challenges facing the economy

Vinashin's financial restructuring demonstrates that Vietnamese companies and the Government are committed to, and capable of, addressing difficult challenges, including recognizing the need to engage meaning fully with foreign lenders. This is an important outcome for potential foreign investors and providers of debt looking at Vietnam.

Faced with a currently challenging macro setting, and increasing regional and global competition for capital, there is a recognition in Vietnam of the need for decisive and meaningful reform in a number of key areas, including amongst others:

- The State Owned Enterprise sector, to encourage private participation and improve efficiencies through restructuring; financial difficulties facing many state-owned enterprises has been widely reported.
- The Banking sector, including NPL resolution and improved governance practices to drive sustainable credit flows and instill confidence in the system, along with reassessing foreign ownership limits;
- Regulation, in particular in respect of property, labour and bankruptcy codes and development of the capital markets.

A number of reform programs have been introduced already such as the establishment of the Vietnam Asset Management Company (VAMC) which commenced operations in July 2013 to help address high NPL levels in the banking system. However, there are uncertainties around how the VAMC will operate in practice and there are a number of significant challenges for it to overcome if it is to be successful in having a meaningful impact.

KPMG acknowledge the reform programs that have been introduced and those earmarked for introduction as well as the significant efforts undertaken in addressing the restructuring of Vinashin's US\$600 million facility in a manner that is fair for creditors. However, this foundation needs to be built upon in a meaningful manner and is contingent upon all market participants supporting and instituting the reforms such that Vietnam reaches its full potential sooner rather than later.

Should you have any comments or related queries to the content, please do not hesitate to contact [Phil Smith](#), co-head of KPMG Vietnam's Restructuring Services practice, Hanoi senior partner [Do Thi Thu Ha](#), and [Eddie Middleton](#), the leader of KPMG Restructuring advisory team in Asia Pacific and China.

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