

Pre-pack Schemes

Singapore

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Agenda

- ▶ Introduction to pre-pack schemes
- ▶ Evolution of pre-pack schemes in Singapore
- ▶ Lessons learned

Introduction to pre-pack schemes

What is a pre-pack?

General definition

“Pre-packs refer to a restructuring that is pre-negotiated and pre-agreed with the key stakeholders and implemented through a Court insolvency process”

Various forms of pre-packs across jurisdictions

- ▶ Not one size fits all
- ▶ United States: Chapter 11 pre-pack
- ▶ United Kingdom: Pre-pack Administration
- ▶ Other countries: Australia and India, amongst others

Introduction to pre-pack schemes

Singapore – Legal regime

Background

- ▶ Introduced as part of amendments to the Companies Act (“CA”) and came into effect on 23 May 2017 (under Section 211I CA)
- ▶ Incorporated into Insolvency, Restructuring and Dissolution Act 2018 (“IRDA”) and came into effect on 30 July 2020 (under Section 71 IRDA)

IRDA

- ▶ Section 71(1) IRDA: Mechanism allows for a Court to sanction a scheme of arrangement even though no meeting of creditors has been ordered by the Court (i.e. instead of two applications to Court – one for leave to convene creditors meeting and one for sanction, only one application for sanction)

Introduction to pre-pack schemes

Singapore – Legal regime

IRDA – Legal requirements for sanction of pre-pack scheme

- ▶ **Information:** Provide each creditor meant to be bound by the arrangement with a statement setting out information for the creditors to make an informed decision (Sections 71(3a) and 71(6) IRDA).
- ▶ **Information:** Includes the following:
 - ▶ Information concerning the company's property, assets, business activities, financial condition and prospects
 - ▶ Information on the manner in which the terms of the arrangement will, if it takes effect, affect the rights of the creditor
 - ▶ Such other information as is necessary to enable the creditor to make an informed decision whether to agree to the arrangement
 - ▶ Any material interests of the directors of the company
 - ▶ The effect that the compromise or arrangement has on those interests, insofar as that effect is different from the effect that the arrangement has on the like interests of other persons (including an Explanatory statement of the scheme)

Introduction to pre-pack schemes

Singapore – Legal regime

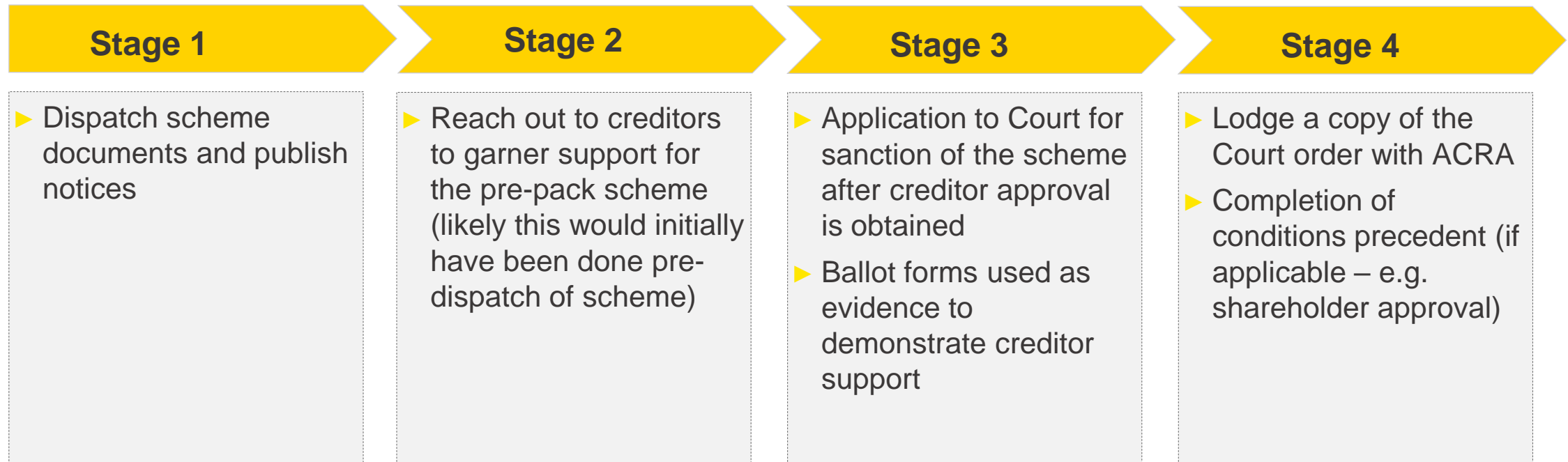
IRDA – Legal requirements for sanction of pre-pack scheme

- ▶ **Notice:** Publish a notice of application for pre-pack scheme in the *Gazette*, at least one English local daily newspaper and send a copy of the notice to the Registrar of Companies and to each creditor meant to be bound by the arrangement (Sections 71(3b) and 71(3c) IRDA)
- ▶ **Creditor support:** Court must be satisfied that had a meeting of the creditors been convened, a majority of the creditors, representing no less than three-quarters in value of debts owed, would have approved the scheme (Section 71(3d) IRDA read with Sections 210(3AB)(a) and (b) of CA)

Introduction to pre-pack schemes

Singapore – Legal regime

IRDA – Stages for a pre-pack scheme



Notes:

1. Assumes no moratorium application under Section 210(10) of Companies Act or Section 64 IRDA

Introduction to pre-pack schemes

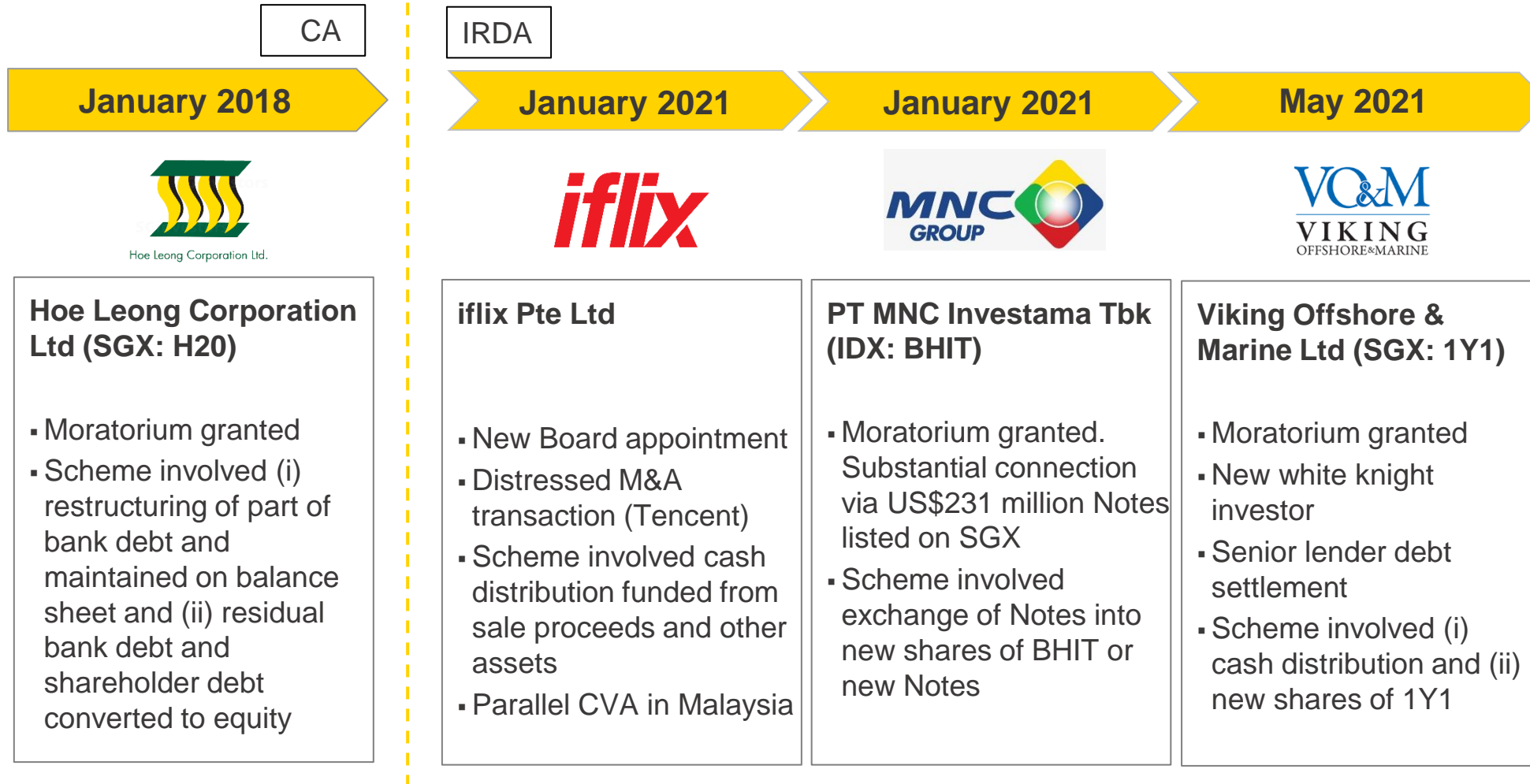
Singapore – Legal regime

IRDA – Simplified Debt Restructuring Programme

- ▶ Overseen by the Ministry of Law
- ▶ Specific qualification criteria to be eligible for SDRP
- ▶ Protection from creditors via a moratorium and temporary restriction on ipso facto clauses
- ▶ Pre-pack scheme concept
 - ▶ Company to obtain evidence to satisfy the Court that there is sufficient creditor support
 - ▶ Lower voting threshold – Majority in number of at least 2/3rd in value of creditors or class of creditors (Section 72M(3)(d) IRDA)

Evolution of pre-pack schemes in Singapore

Overview of scheme terms and key features

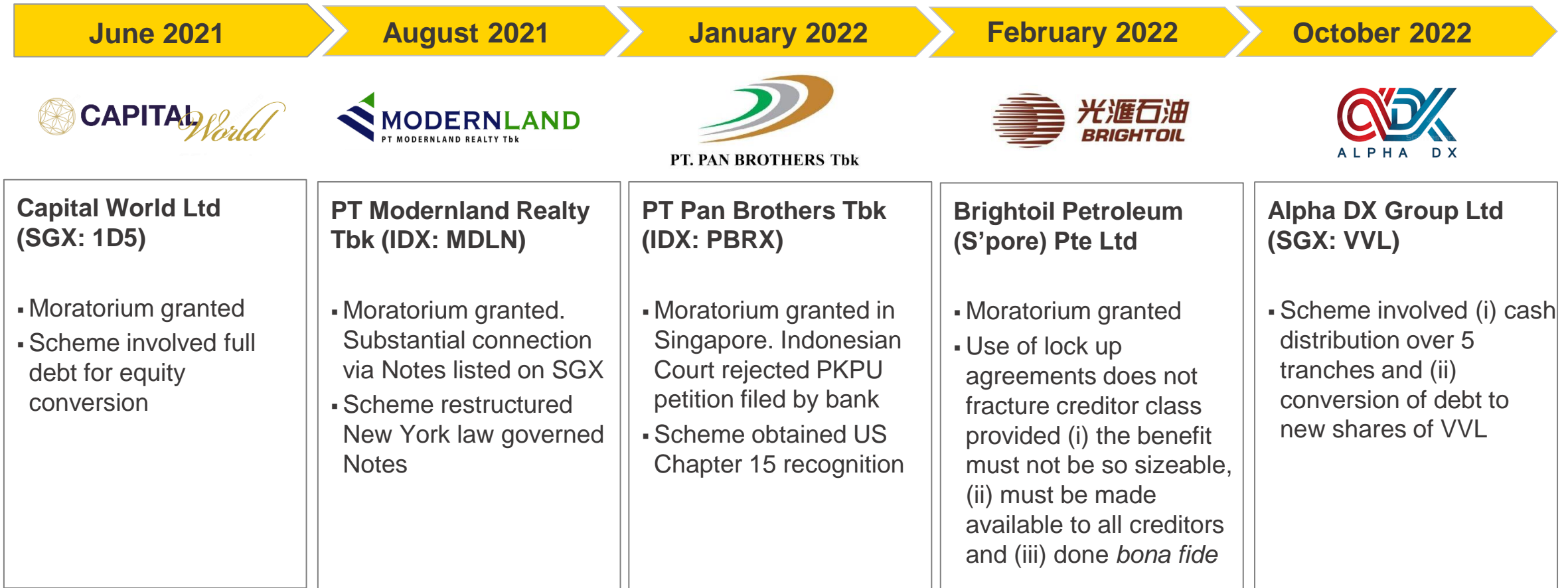


Notes:

1. DHC Capital advised on pre-pack schemes for iflix Pte Ltd and Viking Offshore & Marine Ltd
2. Sycamore Tree and Laurel Tree pre-pack schemes were excluded as the schemes did not restructure any debt

Evolution of pre-pack schemes in Singapore

Overview of scheme terms and key features

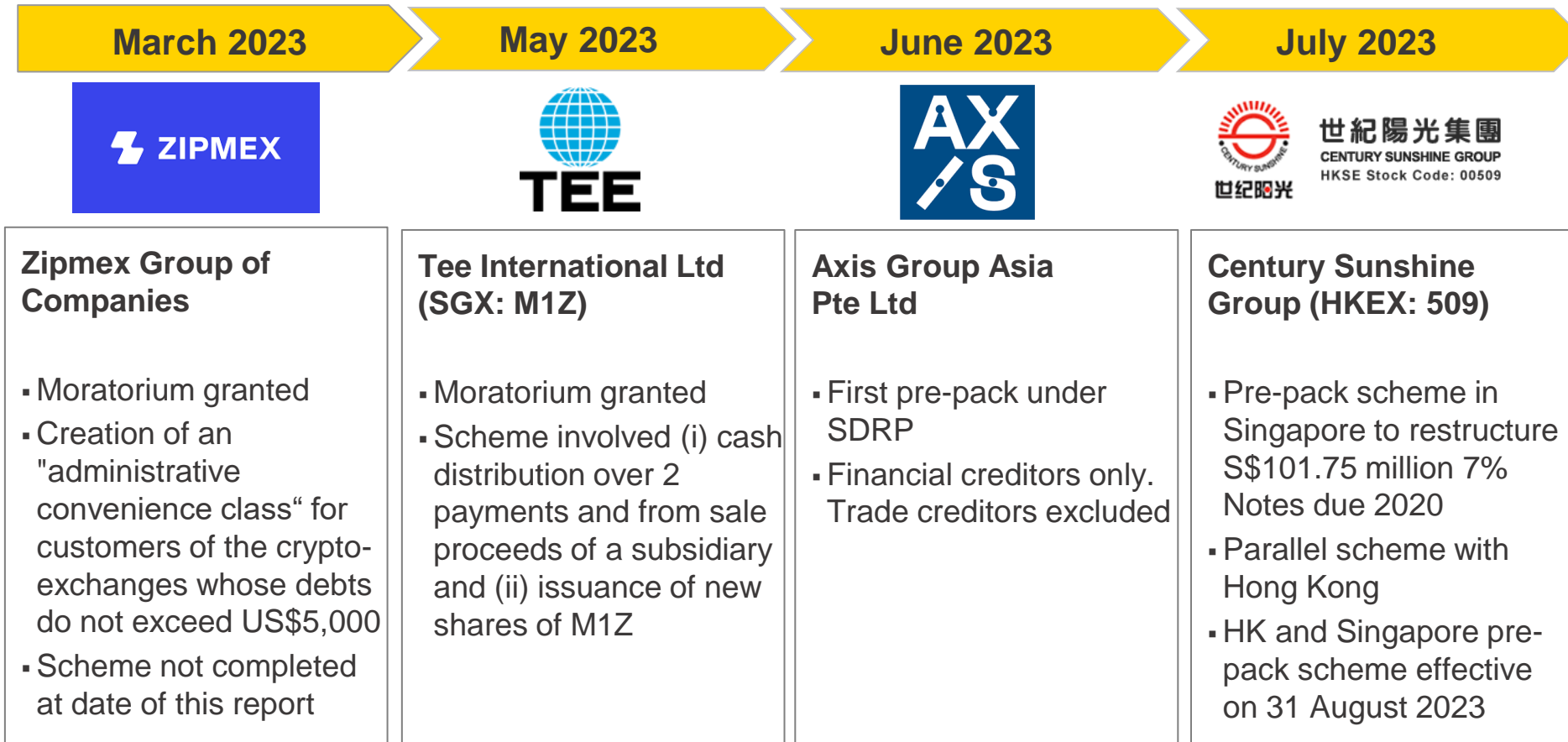


Notes:

1. DHC Capital advised on pre-pack scheme for Capital World Ltd

Evolution of pre-pack schemes in Singapore

Overview of scheme terms and key features



Notes:

1. DHC Capital advised on pre-pack scheme for Axis Group Asia Pte Ltd

2. DHC Capital advised the informal steering committee of Noteholders in the restructuring of S\$101.75 million 7% Notes

Lessons learned

1

Speed and Certainty

- ▶ Faster scheme process saves time and costs (21 days to submit claims; no scheme meeting; 3 months overall timeframe)
- ▶ Certainty of completion via creditor lock up agreements (Brightoil case) and use of administrative class (Zipmex case)
- ▶ Preserves going concern value

2

Moratorium and Recognition

- ▶ Enhanced moratorium to provide “breathing space” – holding company/related companies; “*in-personam*” extra-territorial effect; foreign companies with “*substantial connection*” (MNC and Modernland cases)
- ▶ Foreign acknowledgement of moratorium (Pan Brothers case) and recognition of sanction order (Pan Brothers Chapter 15)

3

Flexible Tool

- ▶ Deals can be structured in combination with other corporate actions – senior debt restructuring (Viking case), equity capital raise (Viking case), distressed M&A (iflix case), new Board / CRO / Interim management appointments (iflix case), parallel procedures (iflix and Century Sunshine case), super priority rescue financing and litigation funding

Lessons learned

4

Creditor Support

- ▶ Use of informal and formal creditor discussions / meetings to solicit creditor support
- ▶ Use of ballot forms to demonstrate creditor support and statutory threshold met
- ▶ Alternatives include lock up agreements or restructuring support agreements

5

Disclosure Requirements

- ▶ *Re DSG Asia Holdings Pte Ltd [2021] SGHC 209*: Court observed that “material information” to be disclosed. Court observed that “material information” is information that enables creditors to assess “whether the allocation of loss and the division of benefits is fair and in their commercial interests”

6

Proper Creditor Classification

- ▶ *Re DSG Asia Holdings Pte Ltd [2021] SGHC 209*: Factors considered in classifying creditors include (i) creditors rights and (ii) if the statutory thresholds are met, whether the creditors whose votes were solicited were fairly representative of the class of creditors taking into regard the creditors’ private interests

Lessons learned

7

Bona Fides and Deed Poll

- ▶ *Re DSG Asia Holdings Pte Ltd [2021] SGHC 209:*
 - ▶ Pre-pack scheme be made *bona fide* and not to skirt around opposition
 - ▶ Pre-pack scheme use of deed poll structure to consolidate or pool liabilities into one entity was acceptable if commercially necessary (Gategroup structure)

8

Limitations on Use of Cram Downs

- ▶ Cross-class cram down (vertical cram down) provisions under Section 70 IRDA are not available in a pre-pack scheme under Section 71 IRDA

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For further information, please visit www.dhccapital.com.

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