

Scheme of arrangements – A tool for restructuring?

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Introduction

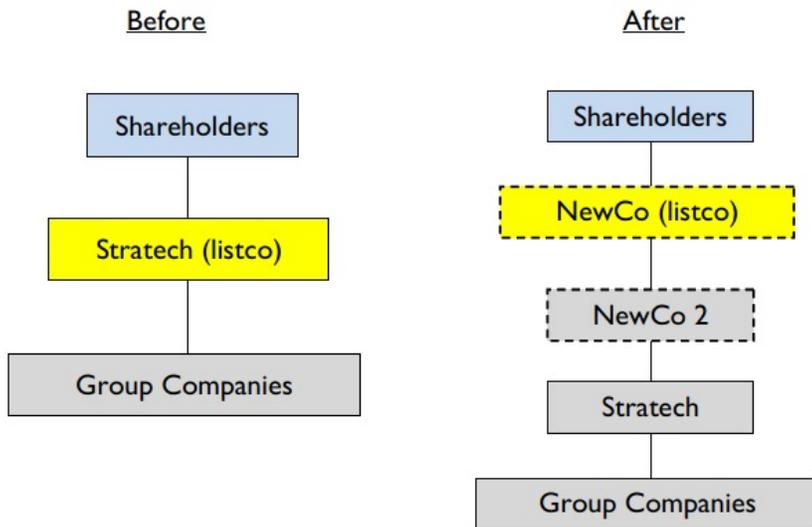
Scheme of arrangements (Scheme) under section 210 of the Companies Act (Chapter 50) of Singapore (the Companies Act) are typically undertaken to, *inter alia*, effect a compromise or arrangement between creditors and members of a company (e.g. to compromise their debts in a company that is on the brink of insolvency as an alternative to liquidation or judicial management), or as a mechanism to take-over companies listed on the Singapore Exchange Securities Trading Limited (SGX-ST). Recently, however, a handful of companies listed on the Catalist Board of the SGX-ST have also implemented internal restructuring exercises by way of a Scheme¹. In 2014/2015, Stratech Systems Limited (Stratech) was the first Main Board listed company to undertake an internal restructuring exercise by way of a Scheme.

Recent schemes of arrangement undertaken by listed companies

In the context of the recent internal restructuring exercises by way of a Scheme, this is achieved by incorporating a new entity (NewCo) to replace the existing listed company (ListCo) as the listed entity within the group and by migrating all of the shareholding interests of the shareholders in the existing ListCo (ListCo Shareholders) to NewCo.

The recent Schemes undertaken so far have involved the transfer of shares (ListCo Shares) originally held by ListCo Shareholders to NewCo and, in consideration for the transfer of ListCo Shares, NewCo would allot and issue to ListCo Shareholders new shares in NewCo (NewCo Shares) on the basis of one NewCo Share for every one ListCo Share held by the ListCo Shareholder. Upon completion of the Scheme, the ListCo would become a wholly-owned subsidiary of NewCo (which replaces the ListCo as the listed entity within the ListCo group), and the ListCo Shareholders would hold shares in the newly-listed NewCo instead. Save for the imposition of NewCo as a new holding entity of the group, there would be no substantive change to the corporate structure or business of the NewCo group as compared to that of the ListCo group. The intention of the Scheme is that the ListCo's listing will be transferred to NewCo, and the NewCo group will continue to own and operate the ListCo group's existing businesses.

Stratech's restructuring was slightly distinct from the other restructurings of the Catalist Board-listed companies as an additional intermediate holding company that is wholly-owned by NewCo was interposed between NewCo and ListCo (NewCo 2), as per the diagram:



Rationale for the Scheme

Where the old ListCo would be the listed vehicle within the group and, in some cases, also be directly engaged in the business of the ListCo's group (such as in the case of Stratech), the Scheme would enable the ListCo to relinquish its status as the listed vehicle and become a wholly-owned operating subsidiary of the newly listed NewCo. NewCo would in turn replace ListCo as the listed vehicle as solely an investment holding entity, and ListCo would be delisted and continue as the operational company carrying out its existing businesses.

Such internal restructuring exercises are usually done for several commercial reasons. In most cases, by having NewCo (being an investment holding company with no business operations) as the listed vehicle on the SGX-ST, the Scheme would enable NewCo to be ring-fenced from the NewCo group's operating entities and direct operating risks, such as possible claims and litigation arising in connection with the NewCo group's operations and business.

The Scheme as a tool for restructuring

At first glance, the benefits of the internal restructuring exercise may not be immediately apparent to ListCo Shareholders, as the restructuring by way of the Scheme would usually not result in any change in the shareholding composition of ListCo Shareholders as the number of shareholders and shareholding composition of NewCo would be the same as that of ListCo prior to the completion of the Scheme. The Scheme would also typically not cause or result in any substantial change in the financial position of the NewCo group compared to that of the ListCo group prior to the Scheme.

However, from a long-term perspective, one may view the implementation of the Scheme as the first step of a broader restructuring exercise for the benefit of the NewCo group. For example, in SHC Capital Limited, the Scheme enabled the group to house a specific business division (which was being run by the existing ListCo) within a separate and independent operating entity in the NewCo group, and allowed the existing ListCo to relinquish its status as a listed company and focus instead on the specific business division as a wholly-owned operating subsidiary within the NewCo Group.

Likewise, in the case of Moya Asia Limited (Moya), the Scheme enabled the group to replace the existing ListCo as the listed vehicle within the group and enabled the ListCo to continue as the operational company. Moya had also

announced that after the completion of the Scheme, and in connection with its further internal reorganisation of the NewCo group, it would dispose of 100% of the ListCo and its existing business, which would enable the company to focus on its other existing businesses and streamline its group structure.

Giken Sakata (S) Limited stated in its scheme document that, following the proposed restructuring by way of the Scheme, NewCo may possibly cooperate with other partners or investors to invest in the old ListCo (which after completion of the Scheme became a standalone operating entity) or allow for the partial or full divestment of its interest in the old ListCo. Had the proposed restructuring not taken place, any divestment of the group's businesses would necessarily have to be made by way of a business and/or asset sale, which most potential purchasers would find unattractive as they would not be able to benefit from the track record of the businesses held by the old ListCo.

In the case of Stratech, the ListCo was of the view that the internal restructuring exercise by way of the Scheme would enable the NewCo group to streamline its existing company group structure and operations to provide leverage for the NewCo group to expand its business globally across its numerous products and capabilities and also achieve ease and flexibility for the new NewCo group to acquire new businesses, as well as expand and/or divest existing business segments as and when opportunities arose. Further, the new corporate structure would provide the NewCo group with greater flexibility in positioning itself to explore other possible investment opportunities, new businesses and business partnerships should they arise, and allow it to dedicate its efforts to focus on its respective business divisions and products through the appropriate operating subsidiary.

In addition, the introduction of NewCo 2 in the case of Stratech as an intermediate holding company provided added flexibility where strategic partners could invest in a specific business segment of the NewCo group, instead of the NewCo group in its entirety, in the event the NewCo group decides to reorganise its business segments subsequent to the proposed restructuring.

Implementation of the Scheme

The Schemes are typically subject to several conditions before implementation. Such conditions, together with other obligations and undertakings, are usually set out in an implementation agreement entered into between NewCo and ListCo on or prior to the date of the announcement of the Scheme. The ListCo would also have to liaise with various regulatory authorities in connection with the Scheme to seek any requisite approvals. In addition, the ListCo will also need to consider if any third party consents are required for the Scheme.

As it is common for listed companies to have various employee share plans, such as employee share option schemes and performance share schemes, in the process of implementation of the Scheme, the ListCo would have to consider and ensure that shareholders who have yet to exercise their options or have outstanding share awards that have yet to vest will not be prejudiced as a result of the Scheme.

Subsequently, the Scheme would have to be approved by ListCo Shareholders in compliance with the requirements of the Companies Act, i.e., by a majority in number of the shareholders representing not less than three-fourths in value of ListCo Shares held by the shareholders, present and voting, either in person or by proxy, at a court meeting to be convened and held under the directions of the High Court of the Republic of Singapore (Court). After the Scheme has been so approved, it must then be sanctioned by the Court and a copy of the Court order sanctioning the Scheme must be lodged with the Accounting and Corporate Regulatory Authority for the Scheme to become effective.

As such, the process of the Scheme may take approximately six (6) months to a year, depending on the time taken to obtain the various regulatory approvals.

Conclusion

It would appear that the incidental benefits of restructuring a company via section 210 of the Companies Act are becoming more attractive to listed companies these days. While undertaking the Scheme is not an entirely straightforward process and requires extensive and detailed investigations into the company, there are numerous potential advantages of the Scheme as an alternative tool to facilitate an internal restructuring exercise of a listed company that is also an operating entity within the group.

Rodyk acted for Stratech in its proposed restructuring by way of a Scheme. Corporate/M&A partner Ng Eng Leng led, supported by partner Chan Wan Hong, senior associates Nigel Chia and Wong Hui Yi. Litigation & arbitration partner Paul Wong led on the litigation aspects, supported by partner Chu Hua Yi and senior associate Charmaine Kong.

¹These companies (as they were then known prior to the restructuring) are: SHC Capital Limited (in 2012); Moya Asia Limited (in 2013) and Giken Sakata (S) Ltd (in 2015).

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