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How to Obtain Recognition of a Foreign Insolvency Process and How to Enforce Insolvency-Related Judgments (Singapore)

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A Practice Note providing a guide to the domestic processes and requirements for gaining legal recognition of a foreign insolvency process in Singapore. This Practice Note also details any separate considerations around the enforcement of insolvency-related judgments in Singapore.

When a company becomes financially distressed and insolvency proceedings are brought against it, these proceedings will most often be brought in the jurisdiction in which the company is incorporated. However, insolvency proceedings may occasionally be commenced in, and under the law of, other jurisdictions in which the company has assets or a branch. These proceedings will need to be administered by the courts in those jurisdictions and subsequently may need to be recognised and assisted by the courts of the company's jurisdiction of incorporation or elsewhere. The courts in other jurisdictions (including the courts of the company's jurisdiction) may also be asked to enforce a foreign judgment made during the foreign insolvency proceedings. This Note explains:

- The statutory authority by which a foreign insolvency process may be recognised in Singapore.
- The specific requirements that a foreign insolvency process must fulfil to be capable of recognition under the domestic law of Singapore as a foreign insolvency process.
- The procedure necessary for a foreign insolvency process to achieve domestic recognition.
- Any court power to grant discretionary relief to assist the foreign insolvency proceedings.
- Whether the courts will enforce judgments given by the foreign court that are related to the insolvency proceedings.

Legal Framework for the Recognition of a Foreign Insolvency Process in Singapore

The international nature of businesses has resulted in corporate insolvencies becoming progressively cross-border in nature. Singapore's desire to be recognised as a global restructuring and insolvency hub means it is important for Singapore to adopt the doctrine of international comity which mandates that foreign judgments should be appropriately deferred to and respected (Desert Palace Inc. (trading as Caesars Palace) v Poh Soon Kiat [2009] 1 SLR(R) 71. The Singapore courts must increasingly consider whether, and how, they should recognise foreign insolvency proceedings and what assistance to offer.

The main sources of law that govern the recognition of foreign insolvency proceedings in Singapore are:

- The United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross Border Insolvency (UNCITRAL Model Law) (see UNCITRAL Model Law on Cross-Border Insolvency).
- Domestic legislation (see Domestic Legislation).
- The common law (see Common Law).

UNCITRAL Model Law on Cross-Border Insolvency

Singapore adopted the UNCITRAL Model Law on Cross-Border Insolvency (Singapore Model Law) in 2017, to aid the recognition of, and assistance to, foreign insolvency proceedings and insolvency office holders. Section 252(1) of the Insolvency, Restructuring and Dissolution Act 2018 (IRDA) gives the Singapore Model Law, contained in the Third Schedule of the IRDA, the force of law in Singapore.

The Singapore Model Law is not significantly different from the UNCITRAL Model Law. However, courts apply the Singapore Model Law differently in some key areas (see Public Policy Exception, Foreign Main Proceedings, No "Solvency Exception", and Enforcement Under the Singapore Model Law).

The Singapore Model Law is limited to corporate entities only. Any entity which is not a "corporation" under Singapore law (for example, business trusts and real estate investment trusts (REITs)) cannot rely on the Singapore Model Law (see Re Tantleff, Alan [2022] SGHC 147 (Tantleff)).

Domestic Legislation

The IRDA deals with insolvency and restructuring proceedings in Singapore and consolidates existing laws relating to individual and corporate insolvency into a single statute (see UNCITRAL Model Law on Cross-Border Insolvency).

Section 250 of the IRDA, covers the liquidation or dissolution of foreign companies in their place of incorporation (outside of Singapore), where that foreign company has established or carried out business in Singapore. This section empowers the High Court in Singapore (High Court) to appoint a liquidator for the foreign company in Singapore, on the application of the foreign liquidator for the company's place of incorporation.

Common Law

Common law remains a relevant source of law concerning the recognition of foreign insolvency proceedings in Singapore. While its relevance has somewhat diminished following the adoption of the Singapore Model Law, it continues to apply in certain circumstances. For example, common law applies to foreign insolvency proceedings commenced before 23 May 2017, because they precede Singapore's adoption of the Singapore Model Law. For more information, see Requirements Under the Common Law.

Customs and Practice

There are currently no known customs or practices that relate to the recognition of foreign insolvency processes.

Requirements for the Recognition of a Foreign Insolvency Process Under Domestic Law

Requirements Under the Singapore Model Law

Article 17 of the Singapore Model Law provides that the High Court may recognise a foreign insolvency proceeding if:

- It involves a "foreign proceeding" (see Foreign Proceeding).
- A "foreign representative" applies for recognition (see Foreign Representative).
- It meets certain documentary requirements (see Documentary Requirements).
- The application is submitted to a "competent court" (see Competent Court).

Where all these requirements have been met, and depending on where the foreign insolvency process is taking place, the High Court may recognise the foreign insolvency process as either a "foreign main proceeding" or a "foreign non-main proceeding." This distinction is relevant because only foreign main proceedings qualify for automatic and mandatory moratorium relief under Article 20(1) of the Singapore Model Law (see Post-Recognition Relief (Foreign Main Proceedings) and Moratorium on Creditor Action Against the Debtor).

Foreign Proceeding

The foreign insolvency process:

- Must involve a "foreign proceeding", that is, a collective judicial or administrative proceeding in a foreign state.
- Is conducted under a law relating to insolvency or adjustment of debt.
- Subjects the property and affairs of the debtor to the control or supervision of a foreign court for the purpose of reorganisation or liquidation.

(Article 2(h), Singapore Model Law.)

Foreign Representative

The person or body applying for the recognition of the foreign insolvency process must be a "foreign representative", that is:

- A person or body, including one appointed on an interim basis.
- Authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding.

(Article 2(i), Singapore Model Law.)

Documentary Requirements

The application must also meet the documentary requirements specified in Article 15(2) and Article 15(3) of the Singapore Model Law. Specifically, the application for recognition must be accompanied by:

- A certified copy of the decision commencing the foreign proceeding and appointing the foreign representative.

- A certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative.
- Any other evidence acceptable to the High Court which shows the existence of the foreign proceeding and of the appointment of the foreign representative (if the first two items are not available).
- A statement identifying all foreign proceedings and proceedings under Singapore insolvency law concerning the debtor, that are known to the foreign representative.

Competent Court

The application must be made to a "competent court", and this is the Singapore High Court (Article 4, Singapore Model Law).

Foreign Main Proceedings

For the High Court to recognise a foreign insolvency process as a foreign main proceeding, the foreign insolvency process must occur in the state where the debtor has its centre of main interests (COMI) (Article 17(2)(a), Singapore Model Law).

Factors in Determining COMI

The Singapore Model Law does not define the debtor's COMI. The starting point in the case of a corporate entity is the place of the debtor's registered office. In the absence of any proof to the contrary, the debtor's registered office is deemed to be the debtor's COMI (Article 16(3), Singapore Model Law). However, this presumption can be displaced. The assessment is heavily fact-dependent, and the key consideration is where the primary commercial decisions for the debtor are made (see Re Zetta Jet Ltd (No. 2) [2019] 4 SLR 1343, at [27] (Zetta Jet (No. 2)). What is most important is the centre of the gravity of the company's commercial activity, while it was active.

For example, in Zetta Jet (No. 2) in determining a debtor's COMI, the High Court considered:

- The location from which the debtor was controlled and administered.
- The location of the debtor's clients.
- The location of the debtor's creditors.
- The location of the debtor's employees.
- The location of the debtor's operations.
- The debtor's dealings with third parties.
- The governing law of the debtor's location.

The Court concluded that the presumption that Singapore, the place of the debtor's registered office, was its COMI, was superseded by the following significant factors:

- The debtor's central management (including the making of operational decisions, control, and direction) was conducted from the US at all relevant times.
- The debtor's corporate representations indicated it operated from the US.
- A substantial portion of the debtor's creditors were in the US.

The High Court also determined that the location of a foreign insolvency representative and its activities were not relevant in determining COMI, as the work done by the foreign representative would stem from the assumption of jurisdiction by the foreign court on whatever basis it considered appropriate (see Zetta Jet Ltd (No. 2), [2019] 4 SLR 1343, at [101] to [103]).This departs from the US position, which is that liquidation activities are relevant in the determination of COMI.

Point at Which COMI is Determined

The High Court determines a debtor's COMI as it existed on the date the foreign representative filed the application for recognition (see Zetta Jet Ltd (No. 2), [2019] 4 SLR 1343). This follows the US approach, and diverges from the positions in other jurisdictions, which provide for the COMI to be determined as it existed on the date of the foreign application (UK and EU) or on the date of the recognition hearing.

Foreign Non-Main Proceedings

The High Court will recognise a foreign insolvency process as a "foreign non-main proceeding" if the debtor has an "establishment" in that state (Article 17(2)(b), Singapore Model Law).

Article 2(d) of the Singapore Model Law defines establishment as any place where the debtor:

- Has property.
- Carries out a non-transitory economic activity with human means and property or services.

(Article 2(d), Singapore Model law.)

Public Policy Exception

An important exception to recognition is the public policy exception. The High Court can refuse to recognise a foreign restructuring or insolvency proceedings on the grounds that recognition would be "contrary to the public policy of Singapore" (Article 6, Singapore Model Law). The High Court considers this to be a lower threshold than that under the original UNCITRAL Model Law, which refers to an action which is "manifestly contrary" to the public policy of the state.

It is unclear what constitutes being "contrary to Singapore's public policy," but an example can be found in Re Zetta Jet Pte Holdings and others [2018] 4 SLR 801 (Zetta Jet (No. 1)). The High Court held that the recognition of a foreign insolvency process, pursued in breach of a Singapore injunction, would undermine the administration of justice, making it contrary to Singapore public policy.

No "Solvency Exception"

Before 18 October 2023, another exception to recognition was the "solvency exception". In Re Ascentra Holdings, Inc (in official liquidation) and others (SPGK Pte Ltd, non-party) [2023] SGHC 82 at [168] to [169], the High Court held that it would not recognise proceedings involving companies which are not insolvent or in severe financial distress under Article 17 of the Singapore Model Law because they would not constitute "foreign proceedings" within the meaning of Article 2(h) of the Singapore Model Law (see Re Ascentra Holdings, Inc (in official liquidation) and others (SPGK Pte Ltd, non-party) [2023] SGHC 82 at [168] to [169] and Foreign Proceeding). However, the Court of Appeal overturned this decision in its decision released on 18 October 2023 where it held that the Singapore Model Law encompasses within its ambit, insolvency, restructuring, or liquidation proceedings concerning solvent companies. The court's reasoning was three-fold:

- There is no express requirement in the relevant provisions of the Singapore Model Law for a company to be insolvent or in severe financial distress for a proceeding (concerning that company) to be recognised as a foreign proceeding under the Singapore Model Law.
- If the above was intended, it would have been easier and clearer to achieve by making the solvency status of the company a necessary criterion.
- The Singapore Model Law should be interpreted in a way that is broadly harmonious with the approaches adopted in other jurisdictions, for example, to recognise proceedings concerning solvent companies.

(See Ascentra Holdings, Inc (in official liquidation) and others v SPGK Pte Ltd [2023] SGCA 32) at [35] to [36].)

Requirements Under the Common Law

Under the common law, the High Court will recognise a properly appointed foreign liquidator from the place of incorporation of the relevant company as the representative of the company (see Beluga Chartering GmbH (in liquidation) and others v Beluga Projects (Singapore) Pte Ltd (in liquidation) and another (deugro (Singapore) Pte Ltd, non-party) [2014] 2 SLR 815 at [87] to [88]). Therefore, the test is based on the place of incorporation of the company.

The High Court has also held that it may recognise foreign liquidation proceedings even if they are not started in the company's place of incorporation (see High Court in Re Opti-Medix Ltd (in liquidation) and another matter [2016] 4 SLR 312 (Opti-Medix)). Specifically, the High Court considered whether it could recognise foreign liquidation proceedings which had been commenced in the relevant company's COMI and determined that it could (COMI Test).

The COMI Test under the common law favours the company's registered office. However, this presumption can be rebutted by clear and objective evidence showing that the company's COMI is in a different jurisdiction. In Opti-Medix, by applying the COMI Test, the High Court determined that, although the relevant companies were incorporated in the British Virgin Islands, it was appropriate to recognise orders made by the Japanese courts, as Japan was the COMI of these companies. It was relevant that Japan was the sole place where the company carried out actual business (see Opti-Medix, [2016] 4 SLR 312 at [24]).

The High Court has also confirmed that it can recognise foreign rehabilitation proceedings in Singapore under the common law and applied the COMI Test in this context (see Re Taisoo Suk (as foreign representative of Hanjin Shipping Co Ltd) [2016] SGHC 195 (Taisoo Suk)).

In addition to the relevant company's place of incorporation, the High Court also considered the following factors, when determining whether to recognise the Korean rehabilitation proceedings:

- The company had its head office in Korea.
- The company was listed in Korea.
- All of the company's representatives were in Korea.

The High Court concluded that the company's COMI was in Korea. However, it also observed that in determining whether a court should grant recognition of foreign rehabilitation proceedings, it also must consider:

- The connection of the company to the forum in which the rehabilitation proceedings are taking place and to the place of rehabilitation.
- What the rehabilitation process involves, including its impact on domestic creditors, and whether it is fair and equitable in the circumstances.
- Whether there is a strong counterargument against recognising the foreign rehabilitation proceedings.

These common law principles apply to all types of liquidation and reorganisation proceedings, with no distinction drawn between voluntary and compulsory processes, or between in-court and out-of-court dissolutions (see Re Gulf Pacific Shipping Ltd (in creditors' voluntary liquidation) and others [2016] SGHC 287, at [7]).

Procedure for Applying for Recognition of Foreign Insolvency Processes

Automatic Recognition or Court Application

The recognition of foreign insolvency processes under the Singapore Model Law and the common law requires the foreign representative to apply to the court and includes an Originating Application and Supporting Affidavit (see Court Application Procedure).

Requirement for Reciprocity

Reciprocity is not required under the Model Law and the Singapore Model Law has not incorporated this provision. Accordingly, the Singapore Model Law is applicable to the recognition of foreign insolvency proceedings which originate from a country which has **not** adopted the Model Law, and which may not recognise a Singapore insolvency proceeding.

The same applies to the common law. It is not required that the foreign jurisdiction in question recognise insolvency processes in Singapore for the High Court to recognise that jurisdiction's insolvency proceedings.

Requirement of Connection Between the Foreign Proceedings or Insolvent Debtor and the Jurisdiction in a Court Application

Under the common law, the High Court does not automatically have the jurisdiction to hear an application for recognition (see Requirements Under the Common Law).

The Singapore Model Law provides that the High Court has jurisdiction if:

- The debtor is, or has been, "carrying out business" within the meaning of section 366 of the Companies Act in Singapore. That is, it:
  - includes the administration, management, or otherwise dealing with property situated in Singapore as an agent, a legal personal representative, or a trustee, whether by employees, agents, or otherwise; and
  - does not exclude activities carried out without the intention of making any profit.
- The debtor has property located in Singapore.
- The court determines, for any reason, that it is the appropriate forum to consider the question or to provide the assistance requested.

  (Article 4, Singapore Model Law.)

Court Application Procedure

If the foreign representative files an application under Article 15 of the Singapore Model Law, it must comply with the following additional procedural requirements:

- The applicant must be the foreign representative who has been appointed in the foreign proceedings.
- The application must be accompanied by one of the following documents:
  - a certified copy of the decision commencing the foreign proceeding and appointing the foreign representative;
  - a certificate from the foreign court affirming the existence of the foreign proceeding and the appointment of the foreign representative; or
  - any other evidence acceptable to the court of the existence of the foreign proceeding and the appointment of the foreign representative.

The application must also be accompanied by:

- A statement identifying all foreign proceedings, as well as proceedings under Singapore insolvency law concerning the debtor, that are known to the foreign representative.
- An English translation of the documents if the supporting documents are in another language.

After the applicant files the Originating Application, the High Court will fix a case conference, usually within 21 days from the date of its acceptance of the filed papers. The applicant must notify all interested parties of its application and the date of the first case conference. Interested parties may include creditors or shareholders.

At the case conference, the High Court will give directions to move the matter forward, depending on the circumstances of the case. If interested parties object, the High Court may direct that responding affidavits be filed, and set the application for a hearing. In uncontested applications, hearings may take place within four weeks. In contested applications, hearings are likely to take place within six to eight weeks of the filing of the application.

Court Power to Grant Discretionary Relief to Assist Foreign Insolvency Proceedings

Discretionary Relief Under the Singapore Model Law

Interim Relief

The High Court can grant various interim relief which may remain in place from the time the foreign

representative files an application for recognition, until the High Court decides the application, at which point the interim relief will terminate (Article 19(2), Singapore Model Law). Interim relief includes, on the application of the foreign representative:

- Granting a stay of execution against the debtor's property.
- Entrusting the administration or realisation of all, or part, of the debtor's property located in Singapore to the foreign representative or another person designated by the High Court, to protect and preserve the value of property that, by its nature or because of other circumstances, is perishable, susceptible to devaluation, or otherwise in jeopardy.
- Granting relief under Article 21(1)(c), (d), or (g) of the Singapore Model Law, including:
  - suspending the right to transfer, encumber, or otherwise dispose of any property of the debtor to the extent this right has not already been suspended under Article 20(1)(c) of the Singapore Model Law;
  - allowing the examination of witnesses, the taking of evidence, or the delivery of information concerning the debtor's property, affairs, rights, obligations, or liabilities; and
  - granting any additional relief that may be available to a Singapore insolvency officeholder, including any relief set out under section 96(4) of the IRDA.

  (Article 19(1), Singapore Model Law.)

The High Court can refuse to grant any relief, if the relief will interfere with the administration of a foreign main proceeding (Article 19(3), Singapore Model Law).

Post-Recognition Relief (Foreign Main Proceedings)

Foreign main proceedings qualify for more automatic and extensive reliefs than foreign non-main proceedings. The High Court must grant certain relief following the recognition of a foreign proceeding that is a foreign main proceeding. This relief includes:

- Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's property, rights, obligations, or liabilities.
- Staying any execution against the debtor's property.
- Suspending any right to transfer, encumber, or otherwise dispose of any of the debtor's property.

  (Article 20(1), Singapore Model Law.)

The stay and suspension are the same in scope and have the same effect as if the debtor had been the subject of a winding up order under the IRDA (Article 20(2), Singapore Model Law). They are also subject to the same powers of the High Court and the same prohibitions, limitations, exceptions, and conditions as would apply under Article 20(2) of the Singapore Model Law. However, the stay and suspension do not affect any rights:

- To enforce security over the debtor's property.
- To repossess goods in the debtor's possession under a hire-purchase agreement (as defined in section 88(1), IRDA).
- Exercisable under, or by virtue of or relating to any written law mentioned in Article 1(3)(a) to (i) of the Singapore Model Law.
- A creditor must set off its claim against a debtor's claim.
- To commence individual actions or proceedings to the extent necessary to preserve a claim against the debtor.
- To commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory, or investigative functions of a public nature that they bring in the exercise of those functions.
- To request or otherwise initiate the commencement of a proceeding under Singapore insolvency law or the right to file claims in this proceeding.

  (Article 20(3) to Article 20(5), Singapore Model Law).

Post-Recognition Relief (Foreign Main and Non-Main Proceedings)

The High Court may grant various relief on recognition of a foreign proceeding, whether a foreign main proceeding or a foreign non-main proceeding, where necessary to protect the property of the debtor or the interests of the creditors, at the request of the foreign representative. This relief includes:

- Staying the commencement or continuation of individual actions or individual proceedings concerning the debtor's property, rights, obligations, or liabilities, to the extent they have not been stayed under Article 20(1)(a) of the Singapore Model Law.
- Staying execution against the debtor's property to the extent it has not been stayed under Article 20(1)(b) of the Singapore Model Law.
- Suspending the right to transfer, encumber, or otherwise dispose of any property of the debtor to the extent this right has not been suspended under Article 20(1)(c) of the Singapore Model Law.
- Providing for the examination of witnesses, the taking of evidence, or the delivery of information concerning the debtor's property, affairs, rights, obligations, or liabilities.

- Entrusting the administration or realisation of all or part of the debtor's property located in Singapore to the foreign representative, or another person designated by the High Court.
- Extending relief granted under Article 19(1) of the Singapore Model Law (see Interim Relief).
- Granting any additional relief that may be available to a Singapore insolvency officeholder, including any relief provided under section 96(4) of the IRDA.

  (Article 21(1), Singapore Model Law.)

The High Court may also, under Article 21(2) of the Singapore Model Law and at the request of the foreign representative, entrust the distribution of all or part of the debtor's property located in Singapore to the foreign representative or another person it designates, if the High Court is satisfied that the interests of creditors in Singapore are adequately protected.

The granting of the above relief is subject to the following requirements and exceptions:

- The High Court must be satisfied that the relief relates to property that, under the law of Singapore, should be administered in the foreign non-main proceeding or concerns information required in that proceeding.
- A stay under Article 21(1)(a) of the Singapore Model Law does not affect the right to commence or continue any criminal proceedings or any action or proceedings by a person or body having regulatory, supervisory, or investigative functions of a public nature that they bring in the exercise of those functions.

  (Article 21(3) and Article 21(4), Singapore Model Law.)

In addition to the above reliefs, the recognition of a foreign proceeding (whether main or non-main) gives the foreign representative standing to take action to avoid acts which are detrimental to creditors. These include the standing to make an order for:

- The avoidance of dispositions of property and certain attachments.
- The transfer of the debtor's company to trustees.
- The adjustment of prior transactions (such as transactions at an undervalue, preferential transactions, extortionate credit transactions, and avoidance of floating certain charges).
- A declaration that any person who is a party to wrongful transactions by the debtor company is responsible for that wrongful trading.

  Where the foreign proceeding is a foreign non-main proceeding, the court must be satisfied that the Article 23 application relates to property that, under the law of Singapore, should be administered in the foreign non-main proceeding.

  (Article 23(1) and Article 23(5) Singapore Model Law.)

For more information see Moratorium Under the Singapore Model Law.

Discretionary Relief Under the Common Law

The High Courts can also grant discretionary relief under the common law. Whether, and how, the High Court renders assistance depends on the circumstances of the case (see Beluga Chartering GmbH v Beluga Projects (Singapore) Pte Ltd [2014] 2 SLR 815 (Beluga), at [99]). Some examples of assistance include:

- Staying a claim if Singapore is not the *forum conveniens* (Beluga at [90]).
- Staying an execution or attachment (Arris Solutions, Inc. and others v Asian Broadcasting Network (M) Sdn Bhd [2017] SGHC (I)).
- Refusing leave to serve process out of jurisdiction (Beluga at [92]).
- Recognising the appointment of a foreign liquidator (including ordering that all moveable assets and records be vested in that foreign liquidator ((Re Opti-Medix Ltd (in liquidation) and another matter [2016] SGHC 108 (Opti-Medix (in liquidation)).
- Refusing to make absolute a garnishee order which would interfere with the liquidation of the company (Opti-Medix (in liquidation)).
- Restraining all pending, contingent, or new proceedings against the company and its Singapore subsidiaries (Taisoo Suk).

The ease of obtaining assistance is likely to depend on the nature of the relief being requested, and the insolvency process that the High Court recognises. The High Court has previously stated that it would be less likely to lend its assistance in the form of "mandatory orders" in comparison to "stays", and it would be wary of allowing a party to exercise their right in relation to a specific asset in the context of foreign rehabilitation (Taisoo Suk).

Moratorium on Creditor Action Against the Debtor

Moratoriums on creditor action are available under:

- The Singapore Model Law (see Moratorium Under the Singapore Model Law).
- The common law (see Moratorium Under the Common Law).

Moratorium Under the Singapore Model Law

The recognition of a foreign proceeding as a foreign main proceeding will result in the High Court granting

an automatic moratorium or stay under Article 20(1) of the Singapore Model Law (see Post-Recognition Relief (Foreign Main Proceedings)).

The High Court has the power to modify or terminate the moratorium or any part of it, in its entirety or for a limited time, on the terms and conditions it deems appropriate. This could be based on an application of the foreign representative or a creditor (who is affected by the moratorium), or of the High Court's own initiative (Article 20(6), Singapore Model Law).

Where the High Court recognises the foreign insolvency process as a foreign non-main proceeding, it may grant a moratorium under Article 21 of the Singapore Model Law, on the application of the foreign representative (see Post-Recognition Relief (Foreign Main and Non-Main Proceedings)).

Moratorium Under the Common Law

The High Court can grant a discretionary stay and restrain relief, under the common law, on the recognition of foreign proceedings.

The High Court recognised a Korean rehabilitation proceeding and granted an interim order staying all pending, contingent, or new actions (see Taisoo Suk at [32]). It stated that, although it should not grant this relief lightly, the requirement for orderly rehabilitation and restructuring of a company running a global business across jurisdictions, and the need to ensure that the company's assets could be marshalled or collected for this effort, both provided sufficiently strong grounds for the exercise of the High Court's inherent powers to grant the restraint and stay orders.

Although Singapore has not adopted the UNCITRAL Model Law on Recognition and Enforcement of Insolvency-Related Judgments the High Court has demonstrated a willingness to enforce insolvency-related judgments of foreign courts under the common law (see Enforcement Under the Common Law), and more recently, under the Singapore Model Law (see Enforcement Under the Singapore Model Law).

The High Court is unlikely to apply the Choice of Courts Agreement Act (CCA) and the Reciprocal Enforcement of Foreign Judgments Act (REFJA) because:

- Insolvency matters are excluded under section 9(2)(d) of the CCA.
- Section 2(2) and section 5(3)(a) of the REFJA appear to exclude winding up proceedings.

Enforcement Under the Common Law

In a case decided before the Singapore Model Law came into effect, the issue presented to the High Court was whether it should recognise an Indonesian court judgment approving the composition plan arising out of Pos Keadilan Peduli Ummat (PKPU) proceedings (Indonesian court-mandated restructurings) (see Humpuss Sea Transport Pte Ltd (in compulsory liquidation) v PT Humpuss Intermoda Transportasi TBK and another [2016] 5 SLR 1322 (Humpuss)). The High Court reaffirmed the common law rule that it will recognise a foreign judgment if:

- It is the final and conclusive judgment of a court.
- According to the private international law of Singapore, that court has jurisdiction to grant that judgment.
- There is no defence to its recognition.

(See Humpuss at [67].)

However, in Humpuss, the High Court refused to recognise the judgment on the basis that it was not considered final and conclusive, because it could be varied.

In the subsequent decision of Heince Tombak Simanjuntak and others v Paulus Tannos and others [2020] 4 SLR 816 (Heince), the High Court held that it would grant recognition of the Indonesian bankruptcy orders and render assistance under the common law on the basis:

- A court of competent jurisdiction made the foreign bankruptcy order.
- The court had jurisdiction based on the debtor's domicile or residence, or by submission by the debtor to the jurisdiction of the court.
- The foreign bankruptcy order was final and conclusive.
- There were no applicable defences to recognition.

Notably, the High Court observed that no distinction should be drawn between foreign corporate insolvency orders and foreign bankruptcy orders (see Heince at [21]).

The High Court allowed full recognition of the Indonesian bankruptcy orders, empowering the foreign representatives to administer the bankrupt's assets in Singapore, although requiring them to obtain court permission to transfer real or immovable property and for the repatriation of any assets out of Singapore. This is consistent with most applications for recognition to date, where the High Court has usually ordered that no repatriation of funds out of Singapore is to occur without leave of court, in contrast with the approach of other jurisdictions (see Heince, at [11]).

The High Court also authorised the foreign representatives to request and receive information on the respondents' finances from various banks.

Enforcement Under the Singapore Model Law

More recently, in Tantleff, the High Court allowed an application for the recognition and enforcement of US Chapter 11 proceedings and a Chapter 11 plan of liquidation in Singapore, under the Singapore Model Law.

In that case, the applicant, in their capacity as foreign representative, sought recognition under the Singapore Model Law of:

- A Chapter 11 plan of liquidation in the US.
- The US bankruptcy court's confirmation of the Chapter 11 Plan, regarding three entities:
  - Eagle Hospitality Real Estate Investment Trust (EH-REIT);
  - Eagle Hospitality Trust S1 Pte Ltd (EH-S1); and
  - Eagle Hospitality Trust S1 Pte Ltd (EH-S2).

The High Court held that while the Singapore Model Law did not explicitly provide for the recognition and enforcement of foreign insolvency orders and judgments, the list of reliefs in Article 21 of the Singapore Model law was non-exhaustive in nature and it was not restricted in its ability to grant any type of relief that was required in the circumstances of the case. Adopting the US approach, the High Court found that, subject to limited exceptions, it can recognise foreign insolvency orders and enforce judgments locally. In other jurisdictions (including the UK), courts interpreting the UNCITRAL Model Law have explained that they may not grant a particular form of assistance if in the same circumstances this assistance may be denied or is not available to a local representative.

Relying specifically on Article 21(1)(g) of the Singapore Model Law, which provides that the High Court may grant "any additional relief that may be available to a Singapore insolvency officeholder", the High Court allowed the foreign representative's application to recognise the orders of the US court regarding the Chapter 11 restructuring plans for EH-1 and EH-2. It declined to make any orders concerning EH-REIT on the basis that REITs are collective investment schemes as opposed to corporate entities, and so would fall outside the scope of the IRDA (see UNCITRAL Model Law on Cross-Border Insolvency).

Recognition of Schemes of Arrangement or Similar Restructurings

The definition of "foreign proceeding" includes proceedings which involve "an adjustment of debt" and "reorganisation" (Article 2(h), Singapore Model Law and see Foreign Proceeding). As proceedings involving schemes of arrangement and similar restructurings fall within this definition, the High Court can recognise these proceedings under the Singapore Model Law (see Tantleff) (relying on Article 21(1)(g) of the Singapore Model Law, which provides that the court may grant "any additional relief that may be available to a Singapore insolvency officeholder", allowing the foreign representative's application to recognise US court orders relating to Chapter 11 restructuring plans for the relevant companies)).

Similarly, under the common law, the High Court has extended its recognition of foreign insolvency proceedings to include rehabilitation and restructuring proceedings (see Requirements Under the Common Law). In addition, in Taisoo Suk the court granted a stay of pending, contingent, or new actions in Singapore to assist in a set of Korean rehabilitation proceedings.

Future Developments

There are currently no known proposed developments taking place within the next 12 months which may affect the recognition of foreign insolvency processes in Singapore.