

Case Comment

**VOID CHARGES AND STATUTORY INJUNCTIONS:
DEVELOPMENTS IN THE LAW OF COMPANY
LIQUIDATION**

Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd
[2024] SGHC 302

[2025] SAL Prac 5

Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd [2024] SGHC 302 concerned an interim injunction application brought by the company and its liquidator, in the context of a clawback action against the company's parent. Two important and novel issues were raised: (a) whether an unregistered charge is void against a provisional liquidator; and (b) whether the exercise of a charge created in circumstances rendering it an unfair preference may be restrained under s 270 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed). This article addresses these twin developments in the law of company liquidation and their potential implications.

NAIR Suresh Sukumaran
*LLB (National University of Singapore);
Advocate and Solicitor (Singapore);
Co-Managing Director, PK Wong & Nair LLC.*

TOO Tat Rui
*LLB (University College London);
Advocate and Solicitor (Singapore);
Associate, PK Wong & Nair LLC.*

I. Introduction

1 It is well known that under s 131(1) of the Companies Act 1967¹ (“CA”), an unregistered charge is void against a liquidator. Is such a charge also void against a provisional liquidator?

2 If a charge is created in circumstances that may render it an unfair preference, can its exercise be restrained pending trial by way of an interim injunction under s 270 of the Insolvency, Restructuring and Dissolution Act 2018² (“IRDA”)?³

3 These issues, among others, were considered by Goh Yihan J in *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd*⁴ (“*GLH v GL Thailand*”).

4 On the first question, Goh J was inclined to the view (but did not find) that an unregistered charge is not void against a provisional liquidator,⁵ meaning that such a charge may be enforced during a period of provisional liquidation.

5 On the second question, the learned judge considered that a statutory injunction was available to a liquidator to restrain the exercise of a charge that may amount to an unfair preference. This would mean that liquidators (and indeed other parties) may now have a potent statutory route to seek injunctions against persons and/or entities suspected of engaging in avoidance transactions with the company in liquidation.

6 In this article, we explore the learned judge’s observations on these issues and their potential implications.

1 2020 Rev Ed.

2 2020 Rev Ed.

3 Section 270 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) is similar to s 409A of the Companies Act 1967 (2020 Rev Ed).

4 [2024] SGHC 302.

5 *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [130].

II. Background (*GLH v GL Thailand*)

7 Following protracted litigation, a company known as JTrust Asia Pte Ltd (“JTA”) obtained a substantial judgment against Group Lease Holdings Pte Ltd (“GLH”),⁶ and, with the judgment debt not having been satisfied, JTA subsequently applied for GLH to be wound up. Pending an appeal by GLH against the judgment (and pending the final hearing of the winding-up application), GLH was placed in provisional liquidation by an order of court dated 6 September 2023.

8 GLH’s appeal was unsuccessful, and at the hearing of the substantive winding-up application on 4 March 2024, it was placed in liquidation by order of court. The provisional liquidator was appointed by the court as the liquidator.⁷

9 The liquidator subsequently commenced proceedings⁸ against Group Lease Public Company Ltd (“GL Thailand”) for (among other reliefs) the court’s determination that various security agreements, which for convenience shall be referred to herein as the “Charges”,⁹ which had been entered into between GLH and GL Thailand, constituted unfair preference transactions under s 225 of the IRDA. In the interim, the liquidator applied for an interlocutory injunction to restrain GL Thailand from exercising rights under the Charges.

10 Some of the Charges, although registrable, had not been registered pursuant to s 131(1) of the CA but were purportedly enforced whilst GLH was in provisional liquidation.

11 One of the arguments made by the liquidator was that interim injunctive relief should be granted because there was a serious issue to be tried as the unregistered charges were arguably void as against him in his capacity as provisional

6 *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2023] SGHC 167.

7 *JTrust Asia Pte Ltd v Group Lease Holdings Pte Ltd* [2024] SGHC 195.

8 HC/OC 565/2024.

9 It was common ground between the parties that the Charges were registrable as such: *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [121].

liquidator at the relevant time. The liquidator relied on s 131(1) of the CA, under which an unregistered but registrable charge is void against the liquidator and any creditor of the company.¹⁰

12 The learned judge granted the interim relief on other grounds, but made some important observations on whether an unregistered registrable charge was void as against a *provisional* liquidator.

III. Whether Charges were void under s 131(1) of the CA against provisional liquidator

A. The High Court's observations

13 Goh J was inclined to the view that unregistered registrable charges were not void against a provisional liquidator for three reasons.

14 First, citing *Re Namco UK Ltd*,¹¹ the learned judge observed that “[t]he usual purpose underlying the appointment of provisional liquidators is to collect and protect assets of the company in question pending the making of a winding-up order and the appointment of liquidators”.¹² The learned judge appeared to consider that it may be inconsistent with this purpose if the provisional liquidator were empowered to avoid unregistered but registrable charges.¹³

15 The second reason has to do with the issue of uncertainty over whether or not the company in liquidation would ultimately be wound up. As the learned judge observed:¹⁴

10 It should be noted that “creditor” here has been interpreted to apply only to a creditor who has acquired a proprietary right to or an interest in the subject matter of the unregistered charge: *Media Development Authority of Singapore v Sculptor Finance (MD) Ireland Ltd* [2014] 1 SLR 733 at [39].

11 [2003] 2 BCLC 78.

12 *Re Namco UK Ltd* [2003] 2 BCLC 78 at [13].

13 *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [128]–[129]; see also *Re Chateau Hotels Ltd* [1977] 1 NZLR 381 at 383–384.

14 *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [129].

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... since a company going into provisional liquidation is inconclusive as to whether the company would ultimately go into winding up, it is sensible that something as drastic as the invalidation of a creditor's security should not occur until there is a measure of finality.

16 Third, the learned judge found that this view (that a provisional liquidator is not empowered to challenge the validity of an unregistered registrable charge) is aligned with the prior pronouncement of the Court of Appeal in *Media Development Authority of Singapore v Sculptor Finance (MD) Ireland Ltd*¹⁵ (“*Sculptor Finance*”) that a statutory trust over the company's assets arises only upon the making of a winding-up order and not merely the filing of a winding-up application.¹⁶

17 Goh J's observations merit closer consideration.

B. Primary purpose of provisional liquidation

18 It is established law that a provisional liquidator's primary duty is to maintain the status quo with the least possible harm to all concerned, so as to enable the court to decide, after a proper and final hearing, whether the company should be wound up.¹⁷ However, this is a general proposition. It is not an inflexible rule, and the primary duty of a provisional liquidator may be different in different circumstances.¹⁸ Further, while this *primary* duty has been identified, the authorities do not go so far as to say that this is the *only* duty of a provisional liquidator in all cases.

19 The full scope of a provisional liquidator's functions and powers may be found in s 138(1) of the IRDA, which provides that “the provisional liquidator has and may exercise all the functions and powers of a liquidator, subject to such limitations

15 [2014] 1 SLR 733.

16 *Media Development Authority of Singapore v Sculptor Finance (MD) Ireland Ltd* [2014] 1 SLR 733 at [50].

17 *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [129]; see also *Low Hua Kin v Kumagai-Zenecon Construction Pte Ltd* [2000] 2 SLR(R) 689 at [36].

18 See *Low Hua Kin v Kumagai-Zenecon Construction Pte Ltd* [2000] 2 SLR(R) 689 at [36], where the Court of Appeal decided that in some cases it would be appropriate for a provisional liquidator to sell assets quickly.

and restrictions as may be prescribed by regulations or as the Court may specify in the order”.¹⁹

20 A plain reading of the provision shows that a provisional liquidator has the same powers as those exercisable by a liquidator under s 144 of the IRDA, unless expressly curtailed or restricted by the order of court appointing him or her.²⁰

21 Because of the powers given to him or her, on hearing an application for the appointment of a provisional liquidator, the court considers as a relevant factor whether there is a reasonable prospect that a winding-up order will be made.²¹ To the extent that the exercise of any of the powers given by s 144 of the IRDA would, in the particular case, be inconsistent with any of the purposes of the appointment of the provisional liquidator, that power may be limited or excluded by the court under s 138(1) of the IRDA.

22 It may be suggested that the case of *Re Chateau Hotels Ltd*²² (“*Re Chateau Hotels*”) is authority for the proposition that, even though the relevant statute may not limit a provisional liquidator’s power, a limitation is implied by reference to the proper scope of the provisional liquidator’s functions.²³

23 In that case, a provisional liquidator applied for declarations, the purpose of which was to challenge the validity of a certain debenture. The court decided that the provisional liquidator would not be permitted to proceed with his application, and in the final paragraph of the judgment, the court did couch the decision as being jurisdictional in nature. However, the court

19 See also s 140 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) as to the duty of a provisional liquidator to take into his or her control the assets of the company.

20 See *Low Hua Kin v Kumagai-Zenecon Construction Pte Ltd* [2000] 2 SLR(R) 689 at [32], where the provisions referred to in the judgment – ss 267 and 272 of the Companies Act (Cap 50, 1994 Rev Ed) – are the equivalents of ss 138 and 144 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed).

21 See *Re Jn Taylor Holdings* (1990) 3 ACSR 600 at 613, cited in *Woon’s Corporations Law* (Walter Woon SC gen ed) (LexisNexis, Desk Ed, 2019) at N1755–N1800.

22 [1977] 1 NZLR 381.

23 Goh J considered this case in *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [128].

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made it clear that it was the circumstances of the case that made it inappropriate that the provisional liquidator should be given the authority he sought.²⁴

24 It is suggested that the case is best understood not as the court deciding that the statute did not give the provisional liquidator the power or *jurisdiction* to challenge the debenture, but as the court, in considering the circumstances of the case, deciding to limit the powers of the provisional liquidator, such as not to permit the liquidator to challenge the debenture.

25 In the circumstances it is suggested that, arguably, the fact that the primary duty of the provisional liquidator is to preserve the status quo does not of itself preclude the provisional liquidator's power to bring an action challenging the validity of a registrable but unregistered charge.

C. Uncertainty

26 It is clear that at the stage of the appointment of a provisional liquidator, it is uncertain if the company will ultimately be wound up. At that stage, therefore, Goh J opined that it would not be sensible for a creditor's security to be invalidated.²⁵

27 It is undoubtedly the case that at the first stage of the compulsory winding-up process – the filing of the winding-up application – it would not be sensible for a creditor's security to be invalidated for non-registration. This is because an unmeritorious winding-up application could be filed such that no winding-up order would ultimately be made and to subject charges to invalidation in such circumstances could give rise to intolerable uncertainty and arbitrariness.²⁶

24 The circumstances being that there was a very good chance that that the winding-up petition would never come to hearing with the result that if the provisional liquidator were permitted to proceed a return of the parties to their original positions would be impossible: *Re Chateau Hotels Ltd* [1977] 1 NZLR 381 at 383.

25 *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [129].

26 Lee Eng Beng, "Insolvency Law" (2004) 5 SAL Ann Rev 302 at para 14.15.

28 It is not clear however if the same reasoning applies in cases where the liquidation process involves a second stage – the appointment of a provisional liquidator.

29 Section 140(1) of IRDA provides that a provisional liquidator is under the same duty as a liquidator to “take into his or her custody or under his or her control all the property and things in action to which the company is or appears to be entitled”. If indeed it may be said that an unregistered but registrable charge forms part of the assets of the company, then it would fall to the provisional liquidator to take it into his or her custody.

30 Indeed, on this basis, IRDA would permit a provisional liquidator to bring a clawback action in respect of unfair preferences under s 225 of the IRDA or in respect of undervalue transactions under s 224 of the IRDA. It is not clear if a distinction may be made in principle between the invalidation of a payment made to a creditor during the relevant time (as defined in s 226 of the IRDA) and the invalidation of a security said to be held by the creditor.

31 It is suggested that the risk that a winding-up order may not be made may be taken into account in limiting the scope of the provisional liquidator’s power when the order for his or her appointment is made.

32 Issues may arise if, at the time of the application for the appointment of a provisional liquidator, the possibility of “invalidating” or clawback actions has either not been contemplated or is not disclosed to the court. In such cases, the court may issue an unqualified order for the appointment of a provisional liquidator, without sufficiently taking into account the effect of the issue of uncertainty on the question of whether or not the provisional liquidators ought to be permitted to bring clawback or invalidation claims.

33 There are two points to be made.

34 First, the “uncertainty” issue does not arise in cases where it is the liquidator who brings the clawback action (or

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seeks to invalidate a charge that was purportedly enforced during the period of provisional liquidation).

35 Second, a solution may be found in the importation of the “relation back” doctrine into s 131 of the CA – pursuant to which, assets subject to an unregistered registrable charge would retrospectively, upon liquidation, form part of the company’s assets with effect from the date of the appointment of a provisional liquidator.²⁷ The effect of this would be that only the liquidator is empowered to bring an application to, say, invalidate a charge, but his or her entitlement to do so relates back to the time of the appointment of the provisional liquidator. As such, the liquidator (and only the liquidator) would be entitled to bring invalidation proceedings in respect of charges that were purportedly enforced during the period of provisional liquidation. It is however difficult to import this “relation back” principle into s 131 of the CA without doing some violence to the words of the provision.

36 A more fundamental question perhaps is whether it may be said that, upon the appointment of a provisional liquidator, an unregistered but registrable charge may be said to form part of the assets of the company available for distribution to the unsecured creditors.

D. The statutory trust

37 As Goh J pointed out in *GLH v GL Thailand*,²⁸ the Court of Appeal held in *Sculptor Finance*²⁹ that it is only upon the making of the winding-up order (in a compulsory winding up) that the assets of the company are impressed with a statutory trust for the purpose of discharging the company’s liabilities. The learned judge opined that since it was only at the time of the winding-up order that the assets comprising the company’s estate are determined and impressed with the statutory trust, it is congruous

27 Such an approach is alluded to in Lee Eng Beng, “Insolvency Law” (2004) 5 SAL Ann Rev 302 at para 14.15.

28 *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [129].

29 *Media Development Authority of Singapore v Sculptor Finance (MD) Ireland Ltd* [2014] 1 SLR 733 at [43].

that the invalidation of an unregistered charge, which has the consequential effect of unencumbering the charged assets such that they constitute the company's and not the creditor's assets, takes place at that time.

38 However, in *Sculptor Finance*, the question before the Court of Appeal was whether it could be said that a statutory trust arose over the company's assets (in a compulsory winding up) on the presentation of a winding-up application or on the making of a winding-up order. The Court of Appeal did not consider whether or not a statutory trust arose upon the appointment of a provisional liquidator.

39 It is suggested that whether or not such a statutory trust arises in such cases depends on what the essential characteristics of the statutory trust are, and on an analysis of whether or not these characteristics are present upon the appointment of a provisional liquidator.

40 Essentially, the statutory trust describes the situation where the property of a company cannot be disposed of by the legal owner for its own benefit but must be used or disposed of for the benefit of other persons.³⁰

41 It is clear that when a winding-up application is filed, the company (being the legal owner of its assets) remains entitled to dispose of its assets. However, it no longer has the ability to do this when a provisional liquidator is appointed. Similarly, if a provisional liquidator disposes of assets (which he or she may in some instances properly do),³¹ those assets must be used for the benefit of the creditors.

42 In the circumstances, it is suggested that there are good grounds for the proposition that, while a statutory trust does not arise upon the filing of a winding-up application, it does arise

30 *Media Development Authority of Singapore v Sculptor Finance (MD) Ireland Ltd* [2014] 1 SLR 733 at [52], citing *Ayerst v C & K (Construction) Ltd* [1976] AC 167 at 179–180.

31 Such as in *Low Hua Kin v Kumagai-Zenecon Construction Pte Ltd* [2000] 2 SLR(R) 689 at [32].

upon the appointment of a provisional liquidator. This being the case, if the crystallisation of the company's entitlement to the assets that are subject to the charge must occur at the same time as the time at which the statutory trust arises, then a provisional liquidator would be entitled to challenge the validity of such a charge.

43 Goh J made observations in *GLH v GL Thailand* at the interlocutory stage and without the benefit of a full argument. The issue remains open for consideration by the court at a later stage.

IV. Section 270 of the IRDA – a new tool in the belt for liquidators

44 The court found it sufficient on the basis of its general jurisdiction to grant some of the injunction orders sought by the claimants. However, as the claimants had identified s 270 of the IRDA as another ground upon which the court may also grant injunctive relief, the learned judge took the opportunity to expound upon the general principles pertaining to s 270.

45 The learned judge summarised the provision as follows:³²

Section 270 of the IRDA sets out the court's power to restrain contraventions of Parts 4 to 11 of the IRDA. A contravention can take the form of either a positive act that is prohibited by the IRDA or an omission to do an act that is required by the IRDA. A contravention by positive act can be restrained by prohibitory injunction (s 270(1)), and a contravention by omission can be redressed by mandatory injunction (s 270(2)). The court may issue a prohibitory or mandatory injunction if (a) it is satisfied that the positive act or omission constituting the contravention has occurred (regardless of whether it appears to the court that the contravention would reoccur or continue); or (b) it is satisfied that, but for the grant of the injunction, the positive act or omission constituting the contravention is likely to occur (regardless of whether it has previously occurred or whether imminent or substantial damage would arise from the

32 *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [178].

contravention) (ss 270(5) and 270(6)). In a case where the court may grant an injunction, it can either add to or substitute the grant of the injunction with an award of damages (s 270(8)).

46 Although *obiter*, the learned judge's observations make several significant statements of the law on statutory injunctions in the context of insolvent companies. Goh J's analysis potentially provides liquidators (and other parties) with a new remedy against potential wrongdoers in clawback actions. The key principles are:

(a) The persons with *locus standi* under s 270 of the IRDA are the official receiver and any person whose interests have been, are or would be affected by the contravention of Pts 4 to 11 of the IRDA. The learned judge adopted the Australian courts' definition of such persons being any person whose interests "go beyond the mere interest of a member of the public", and observed that it is "not necessary that personal rights of a proprietary nature or rights analogous thereto are or may be affected".³³

(b) When considering whether to grant a statutory injunction, the court would be justified to override or go beyond traditional equitable principles governing injunctions if the grant of an injunction would serve a statutory purpose.

(c) An insolvent company (and its liquidator) applying for an injunction under s 270 of the IRDA would be more likely to obtain a statutory injunction than an equitable injunction in the context of clawback actions.

(d) An unfair preference constitutes a contravention of s 225 of the IRDA and thus falls within the scope of conduct which the court is empowered by s 270 of the IRDA to enjoin.

33 See *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [187(b)]; see also *Broken Hill Proprietary Co Ltd v Bell Resources Ltd* (1984) 8 ACLR 609 at 613 and *BPESAM IV M Ltd v DRA Global Ltd (ACN 662 581 935)* (2020) 145 ACSR 116 at [231]–[234].

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47 On principle (a), it should be noted that in addition to the liquidator, creditors (and potentially other parties) may have a direct entitlement to seek injunctive relief under s 270 of the IRDA.

48 On principle (b), the court considered the High Court decision of *Tang Yoke Kheng v Lek Benedict*³⁴ (“*Tang Yoke Kheng*”) which dealt with s 409A of the Companies Act,³⁵ wherein Lai Kew Chai J considered that the court’s power under that provision was not limited by the traditional equitable considerations, and that the court ought to be guided by the further consideration of whether granting the statutory injunction would further the objectives of the Companies Act.³⁶

49 Goh J proceeded to consider competing views of Australian authorities on a similar provision relating to statutory injunctions (s 1324 of the Australian Corporations Act 2001).³⁷ In *Australian Securities and Investments Commission v Mauer-Swisse Securities Ltd*,³⁸ Palmer J found that the statutory jurisdiction accorded by s 1324 of the Australian Corporations Act 2001 provided a basis for *expanding* the court’s powers to grant an injunction, such that the court is free to go beyond the traditional equitable principles relevant to injunctions.

50 However, in *Australian Securities and Investments Commission v Cyclone Magnetic Engines Inc*,³⁹ Martin J took the narrower view that the ordinary principles applicable to injunctive relief ought to apply, so a statutory injunction could only be granted if it fulfilled the additional test of furthering

34 [2004] 3 SLR(R) 12.

35 Cap 50, 1994 Rev Ed. Goh J found that s 409A of the Companies Act 1967 (2020 Rev Ed) and s 270 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) shared a “structural identity” and so applied similar rationale as between the two provisions: *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [180].

36 *Tang Yoke Kheng v Lek Benedict* [2004] 3 SLR(R) 12 at [18].

37 *Tang Yoke Kheng v Lek Benedict* [2004] 3 SLR(R) 12 was previously the only other Singapore authority providing substantial guidance on statutory injunctions.

38 (2002) 42 ACSR 605.

39 (2009) 71 ACSR 1.

the overall objective of the statute under which the injunction is sought.

51 Goh J preferred the view of Palmer J, as Goh J found that if an applicant had to fulfil an additional test of satisfying the court that the injunction sought would further the statutory objective, it would render the provision otiose (being a harder test to pass). The learned judge considered that as a matter of general principle, since Parliament does not legislate in vain, the view of Palmer J is preferred.⁴⁰ It is humbly suggested that this analysis is convincing – for reasons of practicality, no applicant would ever turn to statutory injunctions for relief if the traditional test for injunctions is already met.

52 In respect of principle (c), the court considered that since the traditional test of whether the balance of convenience tilts in the claimant’s favour is typically assessed by whether damages in favour of the defendant would be an adequate remedy to cure the erroneous injunction (and the claimant’s ability to pay said damages as a relevant factor), an insolvent claimant would start off on the back foot.⁴¹

53 However, in a case where the claimant applies to unwind transactions deemed objectionable by the IRDA, by extension of principle (b) above, a statutory injunction sought by a liquidator in the context of clawback actions would readily provide an opportunity for the furtherance of the purpose of the IRDA, as there is a public policy in favour of investigating and addressing the misconduct of former directors and controllers of insolvent companies.⁴² Public policy would thus release the court’s analysis from the constraints of the traditional equitable principles, and the overall result is that even if a defendant can fairly argue that the claimant is unable to pay any damages it incurs, this would

40 *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [185].

41 *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [186].

42 *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [186].

be no real obstacle to the court's decision to grant the s 270 IRDA injunction.

54 With regard to principle (d), Goh J dismissed the defendant's argument that until an insolvency court determines that a transaction is an unfair preference, there is no contravention of IRDA *per se*. The court found that an unfair preference is plainly "liable to be set aside *precisely because* it is a transaction entered into in contravention of s 225 of the IRDA" [emphasis in original].⁴³

V. Conclusion

55 While the question is not free from difficulty, it is suggested that there are good grounds for the proposition that an unregistered registrable charge is void against a provisional liquidator. The question remains to be conclusively decided by the courts.

56 Section 270 of the IRDA has emerged as an important tool available to liquidators (and potentially creditors) to restrain breaches of Pts 4 to 11 of the IRDA, as injunctions may be granted under this provision even in cases where they would not be granted on the application of traditional equitable principles.

⁴³ *Group Lease Holdings Pte Ltd v Group Lease Public Co Ltd* [2024] SGHC 302 at [189].