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REVERSAL OF TRANSACTIONS AT AN UNDERVALUE

An Analysis of Key Developments

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In *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649, and *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141, the Singapore Court of Appeal provided significant clarification on the interpretation and application of s 224 of the Insolvency, Restructuring and Dissolution Act 2018. This provision is one of multiple statutory mechanisms for the reversal of transactions where assets were unduly disposed of prior to winding up. The authors in this article analyse the doctrinal developments emerging from these judgments in relation to the avoidance of undervalued transactions. It systematically examines each component of the legal test, while drawing out key principles articulated by the Court of Appeal. In sum, this article seeks to distil insights most relevant to insolvency practitioners, and to the continuing evolution of avoidance law in Singapore.

Victor C S **YEO**
LLB (National University of Singapore), LLM (University of Melbourne);
Advocate and Solicitor (Singapore);
Associate Professor, Nanyang Technological University;
Associate Director, Aptus Law Corporation.

Charlotte **SIM** Yi Xuan
LLB (Singapore Management University);
Research Assistant, Nanyang Technological University.

I. Introduction

1 It is not often that the Singapore Court of Appeal delivers judgment on a specific provision in a piece of legislation twice in the span of three months. This took place in *Affert Resources*

Pte Ltd v Industries Chimiques du Senegal[1] ("*Affert Resources*"), and *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd*[2] ("*CH Biovest*"). The provision in question is s 224 of the Insolvency, Restructuring and Dissolution Act 2018[3] ("IRDA"). This section is one of several "avoidance provisions" that enable insolvency practitioners to increase the pool of assets available for distribution to creditors. It enables the clawing-back of assets and value that may have been unfairly given away to third parties at a time when the company is insolvent.[4]

2 There are two main rationales for these avoidance provisions. First, there is a need to preserve a company's assets for distribution to creditors when it is facing insolvency (Preservation Rationale). Second, the distribution of assets should be done in accordance with legal rules relating to the priority to whom the assets should be distributed (Distribution Rationale).[5] In line with these rationales, parties should therefore not be permitted to "jump the queue" by getting their hands on assets prior to the insolvency process taking its course. Accordingly, courts are given the power, on an application by the liquidator or the judicial manager, to reconstitute the body of assets by reversing,[6] (*ie*, "avoiding") pre-liquidation transactions that have unjustly enriched a particular party at the expense of others.[7] Such transactions may include transactions that confer an improper advantage on other parties,[8] or dispositions of the company's assets for value that is far less than what the assets are worth.[9]

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1 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2024] SGHC 57 (General Division of the High Court); *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 (Court of Appeal).

2 *Envy Asset Management Pte Ltd v CH Biovest Pte Ltd* [2024] SGHC 46 (General Division of the High Court); *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141 (Court of Appeal).

3 2020 Rev Ed.

4 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ss 226(1)(*a*) and 226(2).

5 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [39]–[40].

6 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 224(1).

7 Vanessa Finch & David Milman, *Corporate Insolvency Law: Perspectives and Principles* (Cambridge University Press, 3rd Ed, 2017) at 487.

8 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 225.

9 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 224(3).

3 This article's focus is on how transactions at an undervalue are treated in the context of an insolvent liquidation and the Court of Appeal's comments on key aspects of s 224 of the IRDA stemming from both *Affert Resources* and *CH Biovest*.

II. Law of undervalued transactions

4 Prior to the enactment of the Insolvency, Restructuring and Dissolution Act 2018,[10] undervalued transactions that were entered into by companies that subsequently underwent insolvent liquidation were governed by the now repealed s 98(1) of the Bankruptcy Act[11] ("BA"), read together with the now repealed s 329 of Companies Act.[12] The Insolvency, Restructuring and Dissolution Act 2018[13] came into force on 30 July 2020 and applies to all bankruptcy and insolvency applications filed on or after that date.[14] If the material transaction took place before this date, the applicable provision would be s 98(1) of the BA, as was the case in *Affert Resources*. Nonetheless, the Court of Appeal in *Affert Resources* acknowledged that principles applicable to s 98(1) of the BA are similarly applicable to s 224 of the IRDA.[15]

5 Section 224 of the IRDA applies to pre-liquidation transactions. To prove that a transaction at an undervalue exists under the provision, four elements must be fulfilled:[16]

(a) The transaction that was entered into must be identified.

(b) The transaction must have taken place within the relevant period as provided for under the legislation.

10 Act 40 of 2018.
11 Cap 20, 2009 Rev Ed.
12 Cap 50, 1994 Rev Ed.
13 Act 40 of 2018.
14 Insolvency, Restructuring and Dissolution Act 2018 (Commencement) Notification 2020.
15 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [40].
16 *Mercator & Noordstar NV v Velstra Pte Ltd* [2003] 4 SLR(R) 667 at [13] and [21]; *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [42].

(c) The transaction must be at an undervalue within one of the two situations set out in the section.

(d) The company must have been insolvent at the time of the transaction or became insolvent as a result.

6 The decisions in *Affert Resources* and *CH Biovest* provide new guidance on the first and third of these elements. *Affert Resources* also provides observations regarding the remedies that may be available where all the elements have been established. We shall examine these in turn.

A. Identifying the relevant transaction

(1) Expansive definition of "transaction"

7 The IRDA defines a "transaction" as meaning "any gift, agreement or arrangement".[17] While the meaning of a "gift" or an "agreement" has been made relatively clear through case law,[18] it is not entirely clear what types of "arrangements" will fall under the purview of s 224 of the IRDA or how "arrangements" should be viewed. The Court of Appeal in *Affert Resources* has provided some clarity on this.

8 *Affert Resources* was about whether a waiver of debt granted by an insolvent company, Affert Resources Pte Ltd ("Affert"), during a corporate group restructuring could constitute a transaction at an undervalue for the purposes of s 98 of the BA. The waiver was for a debt owed by Industries Chimiques du Senegal ("ICS") to Affert. At first instance, the question of whether a "waiver" could constitute a transaction was the crux of the arguments put forward by the parties.[19] Similarly, in the Court of Appeal, it was the main thrust of the argument put forward by the respondents, ICS and Indorama Holding BV ("Indorama"). On this issue, the respondents argued that the waiver was merely

17 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 2.

18 See, *eg*, *Mercator & Noordstar NV v Velstra Pte Ltd* [2003] 4 SLR(R) 667 at [22]–[24]; *Toh Eng Tiah v Jiang Angelina* [2021] SGCA 17 at [52]; *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [47].

19 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2024] SGHC 57 at [21].

"a confirmation by Affert that it would not pursue the ICS Debt", and thus there was no "transaction" for the purposes of s 98 of the BA.[20] Counsel for ICS and Indorama argued for a more "expansive understanding of the relevant transaction",[21] and that matters should be looked at more holistically in determining what the relevant transaction should be when applying s 98 of the BA. The Court of Appeal accepted this argument, noting that "an expansive definition is consistent with the objective of s 98 BA", which is to "revisit any disposition of assets that is tainted by inadequacy of consideration to ensure that the Preservation and Distribution Rationales are upheld".[22] The court held that an "arrangement" may mean a "corpus of associated or inter-related agreements entered into for a common purpose" resulting in the "disposition of the asset(s) in question", even if the "parties to the agreements may not be the same".[23]

9 With this in mind, the Court of Appeal held that it was the whole arrangement that was put into place to facilitate the restructuring which needed to be analysed, not just the waiver on its own.[24] This arrangement was reflected in an acquisition agreement and ensuing side letter, which constituted "the relevant transaction". The waiver that was provided by Affert was an inextricable part of this agreement and hence should not be viewed in isolation from the entire arrangement. To extract the waiver from the context of the acquisition agreement would lead to an erroneous conclusion based only on a partial view of the whole transaction.[25]

10 The ability to look beyond single agreements would help facilitate the policy objectives of the provisions governing

20 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [35].
21 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [45].
22 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [47].
23 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [48].
24 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [56]–[58].
25 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [59].

transactions at an undervalue. In practical terms, the court will pay heed to the unique factual matrix of each case, viewing all events in their appropriate contexts in order to effectively determine the transactions for inclusion as part of the "arrangement". This is an important step in identifying the relevant transaction, bringing the exercise of identifying the relevant transaction closer to achieving the aims of the legislation.

(2) Unearthing substance of transaction

11 Another dimension in the identification of the relevant transaction pertains to its "substance", as opposed to the "form" it takes. In *CH Biovest*, the Court of Appeal was faced with the issue of whether the payment of "profits" to an investor by a company perpetuating a Ponzi scheme was at an undervalue under s 224(3)(*a*) of the IRDA. Unlike in *Affert Resources*, the transaction in *CH Biovest* was clearly identified. However, what was less clear was the true "substance" of the transaction.

12 *CH Biovest* was a case about the Envy group of companies ("Envy"), which purported to operate a business of purchasing and re-selling nickel. Envy offered investors the opportunity to fund the companies' purchase of nickel in exchange for attractive returns by entering into letters of agreement ("LOAs"). Under the LOAs, Envy would pay investors the amount invested plus any profit made at the end of the investment period of three months.[26] In reality, the nickel trades were non-existent and the funds that were provided by new investors were used to pay alleged "profits" to investors who had earlier invested moneys with Envy. CH Biovest Pte Ltd ("Biovest") was one such investor that received "profits" under the scheme. In 2021, after collapsing into insolvency, Envy's liquidators looked to claw back the "profits" that were paid out to investors, including the sum of S$2.3m paid out as "profits" to Biovest ("Overwithdrawn Sums").

13 At the Court of Appeal, Envy's liquidators argued that the payment of the Overwithdrawn Sums should be considered a transaction at an undervalue under s 224(3) of the IRDA. Biovest

26 *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141 at [8].

pressed the argument that the payment of the Overwithdrawn Sums was a transaction for which Envy did receive consideration in the form of the investment sums handed over to Envy. They took the position that the payment of the Overwithdrawn Sums should simply be regarded as the payment of profits to an investor pursuant to Envy's contractual obligations under the terms of the LOA.[27]

14 The Court of Appeal, however, looked beyond the stated purpose of the payment and delved into the nature and substance of the payment. Having regard to the terms of the LOA and how the payments were calculated and structured, the Court of Appeal concluded that the payment of the Overwithdrawn Sums bore no connection with Envy's contractual obligations.[28] As there were in fact no trades made in the Ponzi scheme, there were no "profits" that could have arisen that were contractually payable to any investor.[29] The Court of Appeal then discussed a similar analysis taken in *Donell v Kowell*,[30] a case decided in the US. There, the judge held that payouts of "profits" made by Ponzi scheme operators were not "payments of return on investment from an actual business venture", but rather were "payments that deplete[d] the assets of the scheme" to maintain the fraudulent appearance of a profitable business venture.[31]

15 This is illustrative of one of the possible issues that may arise when a fraudulent investment scheme is uncovered and the company behind the scheme is eventually wound up. In these situations, whether investors are rightfully entitled to their investment returns will depend on the exact contractual terms of the scheme. In *CH Biovest*, the profits to be paid out were tied to the fair market value of "each liquid asset of [Envy]",[32] but Envy never had any nickel assets or trades to begin with. The Court of Appeal contrasted the facts in *CH Biovest* with those in *Fairfield Sentry*

27 *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141 at [89].
28 *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141 at [43]–[46].
29 *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141 at [47].
30 533 F 3d 762 (9th Cir, 2008).
31 *Donell v Kowell* 533 F 3d 762 at 777–778 (9th Cir, 2008); *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141 at [59]–[60].
32 *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141 at [8].

Ltd v Migani,[33] where the articles of association of the investment fund provided for all parties to be bound by a certificate as to the fund's net asset value (NAV) per share given in good faith by or on behalf of the directors. Such statements were communicated regularly to the investors by the fund's administrator. Payments made pursuant to such a certification mechanism are less likely to be regarded as non-contractual payments.[34]

16 By examining the substance of the Overwithdrawn Sums, the court in *CH Biovest* identified the payments made as being transactions that was done extra-contractually, rather than in fulfilment of Envy's contractual obligations under the LOA. This is a distinction that is fundamentally important to the core of the case, as it affects the analysis of whether the transaction was done at an undervalue. A clear identification is instrumental in aiding a liquidator in proving the existence of "undervalue" under s 224 of the IRDA. It is to this issue that we now turn our attention.

B. When is a transaction at an undervalue?

17 Another key issue discussed by the Court of Appeal in *Affert Resources* and *CH Biovest* relates to the circumstances under which an identified transaction is to be regarded as being at an undervalue. Section 224(3) of the IRDA states that a company enters into a *transaction* with a person at an undervalue where:

> (a) the company *makes a gift* to that person, or enters into a transaction with that person on terms that provide for the company to receive *no consideration*; or[35]
>
> (b) the company enters into a transaction with that person for a *consideration the value of which, in money or money's worth, is significantly less* than the value, in money

33 [2014] UKPC 9.

34 Nonetheless, the existence of a functional certification mechanism in an investment agreement cannot render returns generated by fraudulent activities, rather than by legitimate investment strategy, as contractually valid. For a detailed explanation by the Court of Appeal, see *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141 at [48]–[49]; *Fairfield Sentry Limited v Migani* [2014] UKPC 9 at [2].

35 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 224(3)(*a*).

or money's worth, of the consideration provided by the company.[36]

18 These two limbs are disjunctive. We shall explore each in turn.

(1) Insolvency, Restructuring and Dissolution Act 2018 s 224(3)(a)*: meanings of and distinctions between "gift" and "no consideration"*

19 The Court of Appeal in *CH Biovest* viewed s 224(3)(*a*) of the IRDA itself as comprising two distinctive limbs, where a distinction is to be drawn between when a transaction should be viewed as a gift and when it should be regarded as one on terms that provide for the company to receive no consideration.[37] For a transaction to fall within the latter, some form of "mutual dealing" must exist between the parties.[38] This was as opposed to a "gift", which is an express statutory exception to the mutuality rule.[39]

20 The Court of Appeal held that, while "gift" is not defined by the IRDA, the courts have previously accepted that a gift would require (a) delivery of the subject matter of the gift; and (b) an intention to gift.[40] On the facts, the Overwithdrawn Sums were paid to Biovest, fulfilling the requirement for delivery of subject matter. The Court of Appeal also found that Envy had intended to make that payment and for Biovest to "retain the benefit of the moneys", in order to "maintain the fiction that [Envy's] nickel trading business was … genuinely generating returns for investors".[41] Therefore, the payment of the Overwithdrawn Sums

36 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 224(3)(*b*).
37 *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141 at [87]. See also *Velstra Pte Ltd v Dexia Bank NV* [2005] 1 SLR(R) 154 and *BAT Industries plc v Sequana SA* [2019] Bus LR 2178. These cases were both cited by the Court of Appeal in *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141.
38 *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141 at [92].
39 *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141 at [97]; *Velstra Pte Ltd v Dexia Bank NV* [2005] 1 SLR(R) 154 at [22]–[23].
40 *Toh Eng Tiah v Jiang Angelina* [2021] SGCA 17 at [52]; *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 14 at [105].
41 *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141 at [107].

was a "gift" for the purposes of s 224(3)(*a*) of the IRDA, and the transaction was deemed as one at an undervalue.[42]

21 *CH Biovest* establishes how a payment of profits made by an insolvent company perpetuating a Ponzi scheme to its investors would be treated under insolvency law.[43] Those entering the scheme early on should not expect to reap any windfall from those coming late into the game. This is regardless of the fact that the investors themselves may be innocent. It is worth noting, however, that while any "profits" or "returns" paid to the investor may be clawed back under s 224 of the IRDA on the basis that they are gifts, the return of any principal initially handed over to the company as the initial investment will not be subject to the same treatment. This principal sum can be seen as the repayment of a debt.

(2) Insolvency, Restructuring and Dissolution Act 2018 s 224(3)(b)*: the meaning of "consideration worth significantly less"*

22 A liquidator relying on s 224(3)(*b*) of the IRDA will be tasked with conducting a value comparison exercise from the perspective of the insolvent company, and proving that the consideration received was worth "significantly less" than the consideration given. A practical challenge arises where the consideration involves the waiver of a debt or involves benefits that cannot be easily quantified in monetary terms.

23 In analysing the "worth" of this consideration, the Court of Appeal in *Affert Resources* focused on the "likely recoverable amount" of the debt waived and not on the face value of the debt.[44] Since ICS appeared to be both balance sheet and cash flow insolvent

42 *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd* [2025] 1 SLR 141 at [107]–[108].

43 For a closer examination into the treatment of Ponzi schemes under Singapore corporate insolvency law contrasted with other Commonwealth jurisdictions, see Hans Tjio, *Comparative Legal Treatment of Ponzi Schemes* (NUS Law Working Paper 2025/005 & NUS EW Barker Centre for Law & Business Working Paper 25/02, April 2025).

44 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [74].

at the time of the waiver, the Court of Appeal opined that Affert's prospect of recovery of the full debt was low and highlighted that this needed to be taken into account in determining the value of the consideration given by Affert in waiving this debt.[45] The burden fell to Affert's liquidator to prove how much this likely recoverable amount was.[46] Then, with regard to the consideration received by Affert, the court viewed the acquisition agreement as a whole. It held that Affert benefited from the restructuring by the resultant increased likelihood of other related parties repaying their debts owed to Affert and the prospect of continued business activities with the parties concerned.[47] It may be worth noting that the monetary value of these benefits would not have been easy to accurately quantify. However, the Court of Appeal stopped short of undertaking a substantive comparison between the consideration received and the consideration given by Affert, holding that this was Affert's burden to discharge.[48]

24 Two key learning points can be garnered from this in relation to the operation of s 224(3)(*b*) of the IRDA. First, the comparison of the consideration provided and received by the company need not be presented in numerical exactitudes. This, however, may pose some challenges to liquidators in situations where intangible benefits are exchanged between counterparties. Second, when transactions include several counterparties, the financial position of the counterparties may be a pertinent factor in valuing the consideration. The Court of Appeal found that the consideration given by a company which grants a waiver of a debt amounts to the "likely recoverable debt" when the debtor is insolvent. However, liquidators were left with little guidance in quantifying this likely recoverable debt in situations where the debtor is nearing insolvency, but not yet insolvent. These are questions that may need to be explored in future cases.

45 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [77]–[78] and [81].
46 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [81].
47 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [89]–[91].
48 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [97]–[98].

III. Key takeaways

25 For liquidators of insolvent companies, who take on much of the legal burden to establish a *prima facie* case before the courts in any attempt to claw back assets under s 224 of the IRDA, the importance of accurately identifying the relevant transaction cannot be understated. As *Affert Resources* has illustrated, focusing on a specific action or agreement without contemplating how it may fit into the wider scheme of what parties had intended to achieve may cause one to miss the woods for the trees. What may appear to be a transaction at an undervalue when viewed in isolation may in fact have greater value when taken together with other arrangements made by the parties. An accurate identification of the relevant transaction plays a fundamental role, as the facts surrounding the relevant transaction often bolster the liquidator's case for the appropriate subsection to be applied.

26 In summary, it is in creditors' interests that company assets they are rightly entitled to are accessible to them. The Court of Appeal's decisions in *CH Biovest* and *Affert Resources* serve as a timely reminder of the role played by s 224 of the IRDA in achieving the aims of asset preservation and equitable distribution among creditors. While these decisions emphasised and affirmed core concepts long established by prior landmark cases, they also illustrate that the analysis is ultimately fact sensitive and context driven. The court will look beyond form and into substance, examine the commercial realities underpinning each case, and keep the interests of the creditors in mind. Moving forward, insolvency practitioners must navigate this nuanced landscape with care. Only by ensuring that their analysis of potentially undervalued transactions is rigorous, while also being attuned to the broader context of parties' dealings, can the IRDA's overarching objective of fairness in insolvency be achieved.