UNIVERSALISM ON THE ASCENT: SINGAPORE'S CROSS-BORDER INSOLVENCY JOURNEY

Singapore has made tremendous strides in developing its debt restructuring and insolvency regime over the last decade. This article traces this development through the lens of its evolving approach towards the recognition and assistance of foreign cross-border debt restructuring and insolvency proceedings. In particular, the article analyses a selection of key milestones, which chart Singapore's move from territorialism towards an increasing emphasis on (modified) universalism and judicial co-operation and co-ordination.

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I. Introduction

> The successful implementation and coordination of cross-border insolvency proceedings rest in-between, on the one hand, a universalist view of insolvency and the pursuit of a consolidated forum for resolving all insolvency law issues on the one hand, and, on the other, the territorialist view focusing solely on domestic interests at the expense of the interests of all creditors. The central lodestar that guides the effective facilitation of cross-border insolvency must be founded on principles of modified universalism and the goal of securing cooperation between domestic courts, in 'so far as is consistent with justice and [local] public policy'.[2]

1 A thriving global and regional emporium built on open trade and commerce – this has been the lifeblood of Singapore since its founding. As an international finance, business and trading centre, Singapore is home to a high concentration of multinational corporations, organisations and start-ups. With the rise of international and regional commerce in the past decades, businesses are often organised with regard to economic and fiscal considerations. Consequently, such businesses have inter-connected commercial relations across borders, and own assets and assume liabilities across different countries. These businesses,

1 All views and ideas expressed herein are entirely personal.
2 Justice Kannan Ramesh, Keynote Address at the 2nd International Research Conference on Insolvency and Bankruptcy (23 February 2023), citing *McGrath v Riddell* [2008] All ER (D) 116 (Apr).

when faced with financial distress, inevitably impact stakeholders in various jurisdictions.

2 In such circumstances, the absence of a co-ordinated and holistic response encourages a race to the debtor's assets when insolvency threatens. This results in an erosion of enterprise and asset value, which is inimical to the collective interest of all stakeholders. These problems are particularly acute in transnational insolvencies, where piecemeal proceedings may occur across the different jurisdictions, thereby increasing the risk of fragmentation, inconsistent outcomes and jurisdictional arbitrage.

3 Furthermore, having a framework that is capable of providing efficient and predictable insolvency processes brings about various benefits. This will decrease the risk in investment, resulting in a boom for cross-border investment and creation of more jobs, leading to economic and social benefits.[3]

4 The abovementioned downsides and benefits of having a co-ordinated and holistic debt restructuring and insolvency framework has fuelled the development of Singapore's debt restructuring and insolvency regime, in order to assist businesses to deal with financial distress effectively. In this regard, the Insolvency, Restructuring and Dissolution Act 2018[4] ("IRDA") is the centrepiece of insolvency legislation in Singapore. A landmark statute, the IRDA consolidates personal and corporate insolvency and debt restructuring regimes, previously found in two separate statutes, into a single piece of legislation. It also represented the culmination of various rounds of legislative reform to modernise and enhance Singapore's debt restructuring and insolvency regime.[5]

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3 Justice Kannan Ramesh, "Cross-Border Insolvencies: A New Paradigm", paper presented at the International Association of Insolvency Regulators' Annual Conference and General Meeting, Singapore (6 September 2016).

4 2020 Rev Ed.

5 The Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) incorporates relevant provisions from the now repealed Bankruptcy Act and Companies Act into a single statute, building on earlier rounds of amendments to those aforementioned Acts in 2016 and 2017 respectively. In doing so, the Act enhanced Singapore's two main corporate restructuring regimes:

(a) Schemes of arrangement: This is a court-approved agreement between a company and its creditors or members, as the case may be. It allows the debtor to bind different classes of creditors or members to the intended scheme of arrangement, provided that a majority in number representing three-fourths in value of the class of creditors or members present and voting (either by person or in proxy) at the meeting votes in favour of the intended scheme, and the court sanctions the intended scheme of arrangement. In a scheme of arrangement, the debtor remains in possession of the company.

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5 Singapore's development in this space is appreciated, perhaps most lucidly, in its evolving approach towards recognition and assistance in the area of cross-border insolvency. Singapore has, through the years, incrementally enhanced its cross-border insolvency framework, with an emphasis on universalist notions. First, starting off with its common law beginnings, where the precise scope and extent of recognition and assistance depended on the specific circumstances in each case before the court. This body of common law was supplemented in 2016, when the Singapore courts heard a series of notable insolvency cases. These cases acknowledged and further entrenched Singapore's firm approach towards universalism, co-operation and co-ordination. Subsequently, in 2017, Singapore adopted the UNCITRAL Model Law on Cross-Border Insolvency ("Model Law"). The Model Law provides a well-understood and predictable framework for addressing foreign insolvency proceedings in Singapore. This, in turn, increases certainty for debtors, creditors and all who interact with Singapore's cross-border insolvency regime. The adoption of the Model Law has also been complemented by ancillary initiatives that contribute to the broader ecosystem, such as the Judicial Insolvency Network ("JIN") and the Singapore International Commercial Court ("SICC"). Undergirding all these developments has been the principles of modified universalism – which place emphasis on a holistic approach to multinational default, in order to facilitate resolution of conflicts and promote optimal insolvency solutions – and co-operation and co-ordination between jurisdictions.

6 This article is structured as follows: the next Part (Part II) provides a brief overview of modified universalism. Part III traces Singapore's common law beginnings, which applied the ancillary liquidation doctrine. Part IV elaborates how the common law in Singapore further developed, through a series of notable cross-border insolvency cases heard in 2016. Part V discusses two key aspects of Singapore's legislative reforms in 2017: namely the abolition of the ring-fencing rule and the adoption of the Model Law. These two developments signalled Singapore's pivot away from territorialism, towards (modified) universalism. Lastly, Parts VI and VII outline two broader aspects of Singapore's insolvency regime which strengthen Singapore's ability to handle cross-border insolvency cases more effectively and efficiently: first, the JIN and second, the SICC.

(b) Judicial management: This is a temporary court-supervised process that seeks to achieve one or more of the following purposes:

(i) implementing a scheme of arrangement;

(ii) preserving all or part of the company's business as a going concern; or

(iii) obtaining a more advantageous realisation of the company's assets than on winding up.

In a judicial management, the management of the debtor is displaced and a professional or trustee takes possession of the company.

II. Modified universalism

7 Whilst this article is not primarily concerned with the different theories of international insolvency law and its intricacies, it is necessary to have a broad understanding of the global trends towards modified universalism. The principle of modified universalism has been the inspiration for much cross-border co-operation in insolvency matters. This includes the Model Law, which is the leading legislative instrument globally for cross-border insolvency. Unsurprisingly, modified universalism has also informed Singapore's approach to corporate cross-border insolvency, which will be discussed in the subsequent Parts.[6]

8 Modified universalism seeks to achieve global collective processes with optimal levels of centralisation of insolvency proceedings. It adapts universalism (which prescribes the vision of a single law or single forum system for international insolvencies) and territorialism (which prescribes that the effects of insolvency proceedings are limited to such property as is located within the jurisdiction in which the proceedings are opened) to the reality of a world divided into myriad business structures and legal systems.[7] Modified universalism aims to provide an efficient system through optimal levels of centralisation. Centralisation of the process can keep the business together and prevent its breakup in proceedings in multiple forums and allows the conceiving of solutions that maximise the business and its assets' potential.[8] This, therefore, seeks to benefit stakeholders wherever they are located.

9 Applying the principles and philosophy of modified universalism broadly entails one court taking the lead in collecting and distributing the assets of the insolvent debtor; with foreign courts in other jurisdictions recognising and assisting the "lead" proceedings, in so far as consistent with local public policy, to prevent a (value-destructive) race to the debtor's assets.[9] Although there is convergence in global policymaking

6 Besides the application of modified universalism to corporate insolvency, which has been recognised and endorsed in the various cases mentioned in Part III of this article, modified universalism also applies in personal bankruptcy. See *Heince Tombak Simanjuntak v Paulus Tannos* [2020] 4 SLR 816 at [21]–[22] and *Allenger, Shiona v Pelletier, Olga* [2022] 3 SLR 353 at [89]–[90].

7 See also Irit Mevorach, "Overlapping International Instruments for Enforcement of Insolvency Judgments: Undermining or Strengthening Universalism?" (2021) 22 Eur Bus Org Law Rev 283 and Wee Meng Seng, "Lessons for the Development of Singapore's International Insolvency Law" (2011) 23 SAcLJ 932.

8 See Irit Mevorach, *The Future of Cross-Border Insolvency: Overcoming Biases and Closing Gaps* (Oxford University Press, 2018) at pp 14–28.

9 See also Irit Mevorach, "Overlapping International Instruments for Enforcement of Insolvency Judgments: Undermining or Strengthening Universalism?" (2021) 22 Eur Bus Org Law Rev 283.

and judicial attitudes towards the principles of modified universalism, there appear to be differences in the *application* of these principles.[10] In this regard, the subsequent Parts will discuss Singapore's approach towards modified universalism and cross-border insolvency.

III. Common law beginnings

10 Singapore's cross-border insolvency regime has its roots in the common law, which, even at an early stage, espoused concepts of modified universalism. Prior to the adoption of the Model Law in 2017, Singapore legislation contained few express provisions for the rendering of assistance between Singapore courts and the courts of other jurisdictions, in relation to corporate cross-border insolvency matters. Instead, recognition and assistance were provided by way of common law rules, underpinned by the doctrine of modified universalism. In other words, courts should, so far as is consistent with justice and public policy, recognise and give active assistance to foreign insolvency procedures. As noted by the Singapore Court of Appeal:[11]

> Singapore courts are clearly not bound by any stay of legal proceedings that flows from a foreign winding-up order in the absence of local winding-up proceedings. Nonetheless, it remains open to the courts to assist the foreign liquidation proceedings by exercising their inherent discretion to stay proceedings.

11 Within this context, the ancillary liquidation doctrine has been a part of Singapore common law from as early as 1926.[12] This is described in the following terms:[13]

> … one must bear in mind the principles upon which liquidations are conducted, in different countries and in different Courts, of one concern. One knows that where there is a liquidation of one concern the general principle is – ascertain what is the domicil of the company in liquidation; let the Court of the country of domicil act as the principal Court to govern the liquidation; and let the other Courts act as ancillary, as far as they can, to the principal liquidation.

10 Justice Kannan Ramesh, "Cross-Border Insolvencies: A New Paradigm", paper presented at the International Association of Insolvency Regulators' Annual Conference and General Meeting, Singapore (6 September 2016).

11 *Beluga Chartering GmbH v Beluga Projects (Singapore) Pte Ltd* [2014] 2 SLR 815 at [98].

12 *Re Lee Wah Bank Ltd* [1958] 2 MC 81.

13 *Beluga Chartering GmbH v Beluga Projects (Singapore) Pte Ltd* [2014] 2 SLR 815 at [65], referring to *In re English, Scottish, and Australian Chartered Bank* [1893] 3 Ch 385.

12 This approach does not mandate any single course of action and may encompass a broad range of orders to assist the principal liquidation. The precise scope and extent of the court's powers to assist in foreign insolvencies is thus dependent on the specific circumstances of each case.[14] The Singapore courts have, in prior cases, granted various forms of assistance and recognition to foreign insolvencies. For example, the Singapore court ordered that administrators of an English company would have the same power over the company's property and assets in Singapore as they had under English law pursuant to an administration order made by the English High Court.[15] In another instance, the Singapore court granted a declaration that provisional liquidators of a company incorporated in the Cayman Islands were authorised and empowered to recover and take possession of the company's assets in Singapore.[16]

IV. Notable common law developments in 2016

13 With the doctrine of ancillary liquidation firmly embedded as part of Singapore's common law, there were a series of notable cross-border insolvency cases heard in 2016. These cases affirmed an internationalist approach towards cross-border insolvency. In doing so, the cases redefined and further pushed the boundaries of the court's powers of recognition and assistance under the common law.

A. Recognition of foreign liquidators from centre of main interest jurisdiction

14 First, in *Re Opti-Medix Ltd*[17] in 2016, the Singapore High Court broke new ground in recognising a Japanese bankruptcy trustee appointed over a pair of medical companies incorporated in the British Virgin Islands and, in considering this issue, recognised a general movement away from territorialism towards universal co-operation. The companies' main business was factoring receivables from Japanese medical institutions, funded by notes issued by the companies. While the notes were governed by Singapore law, with a Singapore address, they were marketed only in Japan using Japanese brokers. The proceeds were transferred to Singapore bank accounts. The companies eventually went insolvent and bankruptcy orders were granted by the Tokyo District

14 *Beluga Chartering GmbH v Beluga Projects (Singapore) Pte Ltd* [2014] 2 SLR 815.
15 *Re Aero Inventory (UK) Ltd* (Originating Summons No 27 of 2011).
16 *Re China Sun Bio-Chem Technology Group Co Ltd* (Originating Summons No 762 of 2010).
17 [2016] 4 SLR 312.

Court, together with the appointment of a Japanese bankruptcy trustee. The companies had primarily Japanese creditors, though there were two Singapore creditors. The Japanese bankruptcy trustee applied to the Singapore court to recognise his appointment in order to ascertain, administer and dispose of the companies' assets in Singapore.

15 The Singapore High Court allowed the application and recognised the Tokyo bankruptcy orders and the appointment of the Japanese bankruptcy trustee. This affirmed for the first time that proceedings in a company's centre of main interest ("COMI"), but *not* in the place of incorporation, could be recognised under the *common law* in Singapore. The Singapore High Court recognised the bankruptcy orders of the Tokyo District Court and its appointed bankruptcy trustee, as it was clear on the facts that the COMI of the companies was in Japan.

16 This decision was a clear move away from the traditional common law approach, where emphasis was placed on the place of incorporation. The court was cognisant of this, and emphasised as much in its judgment:[18]

> There has been a general movement away from the traditional, territorial focus on the interests of the local creditors, towards recognition that universal cooperation between jurisdictions is a necessary part of the contemporary world. Under a universalist approach, one court takes the lead while other courts assist in administering the liquidation. The tone of the approach in *Beluga* and the telegraphed adoption of the [Model Law] in Singapore are indicators that Singapore is warming to universalist notions in its insolvency regime.

17 Hence, in arriving at the decision, there was a willingness by the Singapore High Court to go beyond traditional bases for recognising foreign insolvency proceedings. The place of incorporation may be an accident of factors and far removed from the actual place of business. In contrast, the approach of identifying COMI was viewed as having much to commend as a matter of practicality and connectivity.

B. Recognition and assistance to foreign rehabilitation proceedings

18 Second, in *Re Taisoo Suk*[19] in 2016, the Singapore High Court used its inherent jurisdiction to stay proceedings, recognising the desirability and practicality of a universal collection of assets. Specifically, the court imposed a moratorium on actions against Hanjin Shipping Co

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18 *Re Opti-Medix Ltd* [2016] 4 SLR 312 at [17], citing *Beluga Chartering GmbH v Beluga Projects (Singapore) Pte Ltd* [2014] 2 SLR 815.

19 [2016] 5 SLR 787.

Ltd and its Singapore subsidiaries on an interim basis in aid of Korean rehabilitation proceedings.

19 The court noted that the decision in *Beluga Chartering GmbH v Beluga Projects (Singapore) Pte Ltd*[20] in 2014 (relating to winding-up proceedings) recognised the desirability and practicality of a universal collection and distribution of assets, and that a creditor should not be able to gain an unfair priority by attachment or execution on assets located within the jurisdiction of the court subsequent to a winding-up order made elsewhere. These observations were held to apply to other forms of insolvency proceedings, including restructuring and rehabilitation processes.

C. Recognition of foreign voluntary winding up

20 Third, in *Re Gulf Pacific Shipping Ltd*[21] in 2016, the Singapore High Court recognised the appointment of foreign liquidators in a voluntary winding up overseas, after preferring an internationalist approach to cross-border insolvency proceedings. The company in question, Gulf Pacific Shipping Limited, was placed into a creditors' *voluntary* winding up in Hong Kong, its place of incorporation. The Hong Kong liquidators sought copies of bank statements from the Singapore branch of a bank. The bank requested the liquidators obtain a court order recognising their appointment and sanctioning their request. Subsequently, the liquidators applied to the Singapore High Court for recognition, as well as for orders empowering the liquidators to obtain the information in relation to accounts belonging to the company.

21 In granting the application to recognise the Hong Kong liquidators, the key issue that required deliberation was whether recognition should be denied as the company was being liquidated via a *voluntary* winding up. On this point, the Singapore court declined to follow the comments in the Privy Council decision of *Singularis Holdings Ltd v PricewaterhouseCoopers*[22] in 2015, namely that the common law powers of assistance would not extend to voluntary windings up, which were viewed as essentially private arrangements. The Singapore High Court stated that no distinction should be drawn between voluntary and compulsory processes. The foundational doctrine in the recognition of foreign insolvency proceedings is the promotion and facilitation of the orderly distribution of assets, as well as the orderly resolution and dissolution of the affairs of entities being wound up. In a cross-border

20 *Beluga Chartering GmbH v Beluga Projects (Singapore) Pte Ltd* [2014] 2 SLR 815.
21 [2016] SGHC 287.
22 [2015] AC 1675.

proceeding, an internationalist approach that gave effect to this was preferred. In particular, the territorial focus on the interest of local creditors no longer had primacy over internationalist concerns, and the precise mode of winding up would not generally be material.

D. The principle in **Anthony Gibbs & Sons La Société Industrielle et Commerciale des Métaux**

22 Lastly, the landmark decision of *Re Pacific Andes Resources Development Ltd*[23] in 2016 ("*Pacific Andes*") considered and declined to follow the "*Gibbs* principle". The *Gibbs* principle is an English common law rule that dates back to the decision in *Anthony Gibbs & Sons La Société Industrielle et Commerciale des Métaux*[24] in 1890 ("*Gibbs*"), which provides that a discharge of debt under the insolvency law of a foreign jurisdiction is only recognised in England if it is discharged under the law applicable to the contract. A modern restatement is provided by Professor Ian Fletcher:[25]

> According to English law, a foreign liquidation – or other species of insolvency procedure whose purpose is to bring about the extinction or cancellation of a debtor's obligations – is considered to effect the discharge only of such a company's liabilities as are properly governed by the law of the country in which the liquidation takes place or, alternatively, of such as are governed by some other foreign law under which the liquidation is accorded the same effect. Consequently, whatever may be the purported effect of the liquidation according to the law of the country in which it has been conducted, the position at English law is that a debt owed to or by a dissolved company is not considered to be extinguished unless that is the effect according to the law which, in the eyes of English private international law, constitutes the proper law of the debt in question.

23 The *Gibbs* principle appears to impact three aspects: choice of law, choice of forum and enforcement. The *Gibbs* principle is premised on the acceptance that questions of discharge of a contractual liability are governed by the proper law of the contract, whether or not that is English law.[26] A court that adheres to the *Gibbs* principle, therefore, applies the proper law of the contract analysis (*ie*, ordinary choice of law rules concerning contracts) in the context of insolvency proceedings. The *Gibbs* principle also appears to encompass a choice of forum rule, whereby only an English court can discharge English law governed debts. Flowing

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23 [2018] 5 SLR 125.

24 *Anthony Gibbs & Sons La Société Industrielle et Commerciale des Métaux* (1890) 25 QBD 399.

25 Ian F Fletcher, *The Law of Insolvency* (Sweet & Maxwell, London, 5th Ed, 2017) ch 30, at para 30-061.

26 *Gunel Bakhshiyeva v Sberbank of Russia & Ors* [2018] EWCA Civ 2802 at para 30.

from this, where a different law is applied to discharge the contractual liabilities, the court denies enforcement of the discharge. In contrast to modified universalism, the *Gibbs* principle precludes giving effect to the central court's insolvency laws and judgments, save to the extent that the process in the central court modifies or discharges debts that the court, applying the *Gibbs* principle, would regard as properly governed by the law generally applicable in the central court.[27]

24 The Singapore High Court in *Pacific Andes* declined to follow *Gibbs*. The court undertook a detailed consideration, including criticism that the principle was based on an outmoded characterisation of discharge as a territorial and contractual matter (as compared to an insolvency law issue).[28] This decision also garnered attention in other judgments, notably in *In re Agrokor d.d., et al*[29] in 2018, where the US Bankruptcy Court for the Southern District of New York agreed with the views expressed in *Pacific Andes*. Despite the position taken by these aforementioned jurisdictions, the *Gibbs* principle continues to be upheld by the UK courts.

V. Legislative reforms in 2017: abolition of ring-fencing and adoption of the Model Law

25 A further milestone in Singapore's journey towards a broader, universalist approach towards cross-border insolvency is the Companies (Amendment) Act 2017.[30] This Act contained numerous wide-ranging reforms,[31] which included, most pertinently for this article, the abolishment of the ring-fencing rule and adoption of the Model Law. These two changes were recommended by the Insolvency Law Review

27 See also Irit Mevorach, "Overlapping International Instruments for Enforcement of Insolvency Judgments: Undermining or Strengthening Universalism?" (2021) 22 Eur Bus Org Law Rev 283.

28 See Justice Kannan Ramesh, "The *Gibbs* Principle: A Tether on the Feet of Good Forum Shopping" (2017) 29 SAcLJ 42; Ian F Fletcher, *Insolvency in Private International Law* (Oxford University Press, 2nd Ed, 2005); and Look Chan Ho, *Cross-Border Insolvency: Principles and Practice* (Sweet & Maxwell, 2016).

29 *In re Agrokor d.d* [2018] Case No 18-12104.

30 Act 15 of 2017.

31 This included super-charging Singapore's restructuring regimes through the engraftment of features from Chapter 11 of the United States Bankruptcy Code, such as enhanced moratoriums (to provide breathing room to the debtor through stays of creditor action), super-priority rescue financing (to encourage fresh funds to assist the debtor through the restructuring proceedings), pre-packaged restructurings (to fast-track pre-negotiated, pre-agreed restructuring plans) and cross-class creditor cram-downs (to allow a restructuring plan that would be in the broader interests of the stakeholders to be approved, notwithstanding the presence of a dissenting class of creditors).

Committee ("ILRC") in 2013, following its root-and-branch review of Singapore's restructuring and insolvency framework.

A. *Abolition of ring-fencing*

26 The ring-fencing rule, which represented a territorial approach to cross-border insolvency proceedings, was abolished in the Companies (Amendment) Act 2017.[32] Prior to 2017, liquidators of foreign companies were required to ring-fence the Singaporean assets of the foreign company to pay off debts incurred in Singapore first, before repatriating the net proceeds of realisations, if any, to the foreign company's principal place of liquidation (the "ring-fencing rule"). It is important to note a nuance: that the basis for this differential treatment was not based on nationality; instead, it was based on the *locus* where the debts were contracted.

27 The changes to the ring-fencing rule are significant because they marked Singapore's departure from a predominantly territorial approach towards cross-border insolvency proceedings. The ring-fencing rule was a long-standing position, having been introduced into Singapore legislation in 1967. In recommending its abolition, the ILRC considered the ring-fencing rule to be contrary to internationally accepted standards of a fair and equitable cross-border insolvency regime.[33] Theoretical and practical arguments for the repeal of the ring-fencing rule were also put forward. These included the fact that the precise rationale for the ring-fencing rule was unclear (it does not effectively protect local creditors, given the ring-fencing rule applies to all debts incurred in Singapore, whether by a local or foreign creditor) and in modern commercial transactions, the *locus* where the debt was incurred is often incidental.[34]

28 Most importantly, in this author's view, the ring-fencing rule was contrary to the growing cognisance, and emphasis in favour, of co-operation and co-ordination in cross-border insolvency proceedings. In such cases, the ring-fencing rule had the negative effect of preferring certain types of creditors at the expense of creditors elsewhere, and encouraging a multiplicity of proceedings across jurisdictions. This would result in increased costs and hinder the maximisation of enterprise value.

32 Save for certain specified exceptions, mainly in relation to debts owed to financial entities, such as banks and insurance companies.

33 Insolvency Law Review Committee Ministry of Law, *Report of the Insolvency Law Review Committee: Final Report* (2013) at pp 239–243.

34 Wee Meng Seng, "Lessons for the Development of Singapore's International Insolvency Law" (2011) 23 SAcLJ 932.

B. Adoption of the Model Law

29 In addition to the abolishment of the ring-fencing rule, another key milestone was the adoption of the Model Law in 2017. In recommending the adoption of the Model Law, the ILRC viewed the Model Law as a comprehensive and internationally-recognised framework for addressing cross-border insolvencies, which would lend far greater clarity and certainty than the common law and domestic legislation at the time.[35] The Model Law also ensured that Singapore kept pace with the borderless nature of trade and concomitant circumstances surrounding failure of such businesses.

30 With its watershed enactment in 2017, the Model Law has assumed centrality for foreign representatives seeking recognition of and assistance with foreign insolvency proceedings in Singapore. Where the Model Law applies to the subject matter, the Model Law would be the first port of call, and Singapore courts would be slow to allow common law recognition to be invoked as an alternative.[36]

31 The Model Law comprises four main elements in the conduct of cross-border insolvency proceedings:

(a) *access* to local courts for representatives of foreign insolvency proceedings and creditors;

(b) *recognition* of foreign proceedings;

(c) *relief* to assist foreign proceedings; and

(d) *co-operation* between the local court and the foreign court or representatives of the foreign proceedings.

32 Key planks of the Model Law pertain to the recognition of, and grant of assistance and relief to, foreign insolvency proceedings. The Model Law establishes a streamlined and simplified procedure for an application to recognise the foreign proceeding in Singapore.[37] If the foreign proceeding is recognised, specified forms of relief are available to assist the foreign proceeding. The type of relief provided depends

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35 Insolvency Law Review Committee Ministry of Law, *Report of the Insolvency Law Review Committee: Final Report* (2013) at p 234.

36 *Re Rooftop Group International Pte Ltd* [2020] 4 SLR 680.

37 See Arts 15 and 16 of the Singapore Model Law. A foreign representative can apply to the Singapore court for recognition of foreign insolvency proceedings by providing certified documentation of the existence of the foreign proceeding and of the appointment of the foreign representative, as well as a statement identifying all known insolvency proceedings in respect of the debtor.

on whether the foreign proceeding is recognised as a foreign main proceeding or a foreign non-main proceeding:

(a) Upon recognition as a foreign main proceeding (*ie*, the foreign proceeding is taking place in the state where the debtor has its COMI), certain automatic relief ensues, such as a stay of actions against the debtor and its assets.

(b) Upon recognition in all cases (whether as a foreign main proceeding or foreign non-main proceeding), the court may grant discretionary relief.

33 Singapore jurisprudence on the Model Law is growing rapidly,[38] and for the purposes of this article, three specific areas are discussed in greater detail: reciprocity, public policy and discretionary relief, specifically via the application of foreign law and recognition of foreign judgments and orders.

(1) Reciprocity

34 When Singapore considered enacting the Model Law, the issue of whether to impose a reciprocity requirement as a pre-condition to recognition and assistance was keenly debated. A reciprocity requirement, had it been imposed, would mean that Singapore would only recognise foreign proceedings from Country A if Country A recognises proceedings from Singapore. Ultimately, Singapore's enactment of the Model Law did not include a requirement of reciprocity. Hence, the Singapore Model Law ("Singapore Model Law") applies to foreign proceedings emanating from any State, regardless of whether that State has enacted the Model Law.

38 See, *eg*:

(a) *Re Zetta Jet Pte Ltd* [2019] 4 SLR 1343, which addressed the time for determining COMI in Singapore, and the factors and circumstances to be considered in determining COMI. First, the time for determining COMI in Singapore is the time of filing the recognition application. This is in contrast to the other approaches, which include determining COMI either on the date of the commencement of the foreign proceeding, or the date on which the court decides the recognition application. Second, to determine COMI, the starting position is the presumption under Art 16(3) of the Model Law in favour of the registered office. This presumption may nevertheless be displaced by the place of the company's central administration and other factors that point the COMI away from the registered office to some other jurisdiction.

(b) The principles applicable to recognition of foreign proceedings and the effect of such recognition in *United Securities Sdn Bhd v United Overseas Bank Ltd* [2021] 2 SLR 950.

35 In considering this issue, the ILRC considered arguments for and against imposing a reciprocity requirement:

(a) In favour of imposing such a requirement, the ILRC viewed that many of the advantages that are reaped from the Model Law – such as the equality of treatment for local creditors, ease of recovering assets from foreign jurisdictions and more efficient treatment of international insolvencies involving local businesses – may come only if other countries also enact the Model Law. The ILRC noted, however, that the Model Law had not yet achieved widespread international adoption. Moreover, imposing a reciprocity requirement would ensure that the Model Law would not oblige the Singapore courts to recognise and assist foreign proceedings from jurisdictions that were not reliable or transparent, or did not meet universally accepted standards of procedural and substantive fairness.

(b) On the other hand, the ILRC noted that most other jurisdictions that adopted the Model Law did not impose a reciprocity requirement[39] and the imposition of a reciprocity requirement would not fully achieve the purpose of having a clear, predictable and comprehensive legal framework for managing all cross-border insolvencies. Additionally, the ILRC noted the Model Law itself contained certain safeguards that would protect local creditors and (local) public policy.

(c) The ILRC concluded that, on balance, its preference was that no reciprocity requirement should be imposed. But, as the ILRC viewed this as ultimately a policy issue, the ILRC deferred to the views of the Government.

36 Following the issuance of the report of the ILRC, the Government accepted the recommendation to adopt the Model Law without a reciprocity requirement. There was no opposition to this raised in the course of the public consultation exercise on the report of the ILRC.[40]

37 Singapore's eventual enactment of the Model Law without a reciprocity requirement is a positive development, for various reasons. First, it ensures that Singapore provides a consistent and internally

39 Insolvency Law Review Committee Ministry of Law, *Report of the Insolvency Law Review Committee: Final Report* (2013) at pp 236–238. This, however, is not the case in other States, such as South Africa, Mexico and Romania.

40 There was no mention of the reciprocity requirement in the summary of feedback on the Insolvency Law Review Committee Report and the Ministry of Law's response, where the Ministry's approach was not to reflect the recommendations for which no feedback was received and where the Ministry of Law was in agreement.

coherent framework for the recognition of foreign proceedings, including *vis-à-vis* the possibility of recognition under common law.[41] Second, Singapore's approach furthers the broader purposes of the Model Law.[42] The imposition of a reciprocity requirement would have reduced predictability in the recognition of foreign insolvency proceedings and ultimately affected debtors' ability to seek recognition of the foreign proceedings in Singapore.[43] Lastly, with the Model Law in place in Singapore for over half a decade, there have been no known cases of malfunction. The Singapore courts have also utilised the safeguards provided in the Model Law to maintain control over the recognition of the foreign proceedings.[44]

(2) Public policy exception

38 Even as the Model Law seeks to facilitate optimal outcomes for stakeholders through cooperation in cross-border insolvency cases, there remains a real and pragmatic need to ensure that Singapore's fundamental local policies and justice system are adequately protected. The Model Law,

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41 Even if reciprocity had been imposed, foreign proceedings may, in any event, be recognised under the common law, which may have led to two separate and possibly divergent recognition regimes. For further discussion, see Harold Foo & Beverly Wee, *Annotated Guide to the Singapore Insolvency Legislation: Corporate Insolvency* (Academy Publishing, 2023) ch 14, at para 14.005.

42 The Preamble of the Model Law in the Third Schedule of the Insolvency, Restructuring and Dissolution Act 2018 provides:

> The purpose of this Law is to provide effective mechanisms for dealing with cases of cross-border insolvency so as to promote the objectives of —
>
> (a) cooperation between the courts and other competent authorities of this State and foreign States involved in cases of cross-border insolvency;
>
> (b) greater legal certainty for trade and investment;
>
> (c) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors and other interested persons, including the debtor;
>
> (d) protection and maximisation of the value of the debtor's property; and
>
> (e) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

43 For a general discussion see Keith D Yamauchi, "Should Reciprocity Be a Part of the UNCITRAL Model Law Cross-Border Insolvency Law?" (2007) 16 Int Insolv Rev 146.

44 See, *eg*, the case of *Re Zetta Jet Pte Ltd* [2018] 4 SLR 801 (discussed in detail at paras 39–40) and *United Securities Sdn Bhd v United Overseas Bank Ltd* [2021] 2 SLR 950. In the latter case, while a moratorium on commencement of proceedings against the company may be granted by Singapore courts in assistance to foreign insolvency proceedings, such assistance does not extend to granting a stay on an action to enforce a charge over shares in the company. It was noted that the Model Law ensures the orderly and equitable distribution of assets and to facilitate the restructuring process, wherever possible. It is not, however, intended to preserve a party's position within the company in the case of a dispute between shareholders.

by design, preserves the recognising court's ability to evaluate the fairness of the foreign proceeding and to protect the interest of local creditors, including through a public policy exception.[45]

39 Article 6 of the Model Law provides that a local court may refuse assistance in relation to foreign insolvency proceedings where assistance would be "manifestly contrary to the public policy" of the local state. In a departure from the UNCITRAL Model Law, the Singapore Model Law adopted Art 6 without the word "manifestly"; that is, the Singapore courts may refuse recognition if it would be "contrary" to public policy. This is similar to the positions in Japan and the Republic of Korea. The effect of this is explained by the Singapore High Court in *Re Zetta Jet Pte Ltd*[46] ("*Zetta Jet (No 1)*"):[47]

> This would seem to mean that recognition may be denied if recognition is merely contrary to public policy, without being manifestly so … What flows from the omission being deliberate is that the standard of exclusion on public policy grounds in Singapore is lower than that in jurisdictions where the Model Law has been enacted unmodified.

40 In *Zetta Jet (No 1)*, the first reported decision on the Singapore Model Law, the Singapore High Court relied on the public policy bar to grant limited recognition of Zetta Jet Pte Ltd's ("Zetta Jet Singapore") US trustee. After US Chapter 11 proceedings were commenced against Zetta Jet Singapore and its Californian subsidiary, Zetta Jet USA, Inc, an injunction was obtained in Singapore by a shareholder of Zetta Jet Singapore. The injunction prohibited Zetta Jet Singapore and certain other shareholders from taking further steps in relation to the US bankruptcy proceedings. In contravention of the Singapore injunction, the US bankruptcy proceedings continued, including the conversion of the Chapter 11 proceedings into Chapter 7 (liquidation). The US Chapter 7 trustee thereafter applied for recognition in Singapore, under the Singapore Model Law. The Singapore court declined to grant recognition on public policy grounds, having found that the US Chapter 7 trustee was appointed in breach of the Singapore injunction. In addition, the court noted that even under the higher threshold of "manifestly contrary to the public policy" under the unmodified version of the UNCITRAL Model Law, the same result could arise.[48] Nevertheless, the

45 Besides the public policy exception, Arts 21 and 22 provide that certain reliefs (including entrusting a foreign insolvency office-holder with the distribution of assets located within the jurisdiction) may only be granted where the local courts are satisfised that the interest of local creditors are adequately protected.

46 [2018] 4 SLR 801.

47 *Re Zetta Jet Pte Ltd* [2018] 4 SLR 801 at [21]–[23].

48 As exemplified in the decision in *In re Gold & Honey, Ltd* 410 BR 357 (Bankr EDNY, 2009), in which the United States Bankruptcy Court for the Eastern District of New

(cont'd on the next page)

Singapore court exercised its discretion to grant limited recognition to the Chapter 7 trustee, for the purposes of setting aside or appealing the Singapore injunction order.[49]

(3) *Application of foreign law and enforcement of foreign judgments*

41 The Singapore Model Law and the case law applying it envisages that relief may be granted to foreign proceedings, where appropriate, by way of the application of foreign law and the enforcement of foreign judgments and orders. Article 21 of the Singapore Model Law empowers the court to grant discretionary relief upon recognition of a foreign proceeding (regardless of whether it is recognised as a main or non-main proceeding) in order to protect the property of the debtor or interests of the creditors. In exercising this discretion, the general inclination is to grant orders to assist the foreign representative in the performance of his or her functions to the same degree and extent as would be granted to a local insolvency representative.[50] However, subsequent cases, as explained in detail below, have viewed that a strict analogy or parallel with Singapore insolvency or restructuring regimes is not necessary. The Singapore court may, in appropriate circumstances, grant relief in the form of applying foreign insolvency law or recognising foreign judgments or orders. This appears to be more in line with the legislative drafting of the Singapore Model Law.

42 First, regarding the application of foreign law – the Singapore court may, in appropriate circumstances, apply foreign insolvency law when granting discretionary relief under Art 21(1)(*g*) of the Singapore Model Law. This provision of the Singapore Model Law differs from the UNCITRAL text of the Model Law, as it omits the qualifier that the additional relief granted to the officeholder must be "under the laws of this State [Singapore]". This deliberate omission is significant, as it brings Art 21(1)(*g*) of the Singapore Model Law in line with the language of the US enactment of the Model Law under Chapter 15 of the United States

York denied recognition of an Israeli receivership proceeding, being manifestly contrary to public policy because it was obtained in violation of stay orders by the US courts.

49 After *Re Zetta Jet Pte Ltd* [2018] 4 SLR 801, the Singapore injunction was discharged by consent and a second recognition application was brought in *Re Zetta Jet Pte Ltd* [2019] 4 SLR 1343. As the injunction had been discharged and the court issuing the order was content to let the order be discharged, it was held that recognition in such circumstances no longer undermined the administration of justice in Singapore; notwithstanding the separate matter of potential proceedings for contempt of court in respect of the earlier breach of the injunction.

50 *Re Rooftop Group International Pte Ltd* [2020] 4 SLR 680 at [26].

Bankruptcy Code. In the US, the ability to apply foreign law is firmly established in its jurisprudence.

43 The underlying intention is explained in the Government's response to feedback on this issue.[51] Feedback was provided that despite similar wording in their respective provisions under the Model Law, the UK and US differed in their approaches on the scope of relief. The feedback, therefore, suggested that Singapore should signal whether the UK or US approach should be adopted in respect of relief that may be granted under Art 21(1)(*g*) of the Singapore Model Law. The Ministry of Law, in its response, stated that the US approach was preferred. Subsequently, the language in Art 21(1)(*g*) of the Singapore Model Law was aligned with the wording in the US enactment of the Model Law.[52]

44 Second, regarding the recognition of foreign insolvency judgments and orders – the Singapore court is empowered to recognise and enforce foreign insolvency judgments and orders. At the outset, the enforcement of insolvency judgments is inextricably linked with choice of law: when a local court is requested to enforcement a judgment of a foreign court, it may indirectly also need to defer to foreign law. In *Re Tantleff, Alan*[53] in 2022, it was held that Art 21(1)(*g*) of the Singapore Model Law allowed recognition of foreign judgments and orders, including Chapter 11 plans and confirmation orders.[54] Looking at the specific language of the Model Law as enacted in Singapore, it was highlighted that the Government, in responding to public consultation, stated that the wording of Art 21(1)(*g*) of the Singapore Model Law followed that of the US, rather than the UK. However, in granting relief by way of recognition of a foreign judgment or order, the Singapore court is not merely acting as a rubber stamp. The court must carefully scrutinise the circumstances in which the foreign order was granted and ensure that interested parties were given an

51 *Ministry's Response to Feedback From Public Consultation on the Draft Companies (Amendment) Bill 2017 to Strengthen Singapore as an International Centre for Debt Restructuring* (Ministry of Law Singapore, 27 February 2017).

52 For further discussion on this issue, see Harold Foo & Beverly Wee, *Annotated Guide to the Singapore Insolvency Legislation: Corporate Insolvency* (Academy Publishing, 2023) ch 14, at para 14.191.

53 [2023] 3 SLR 250.

54 See also *Re Rams Challenge Shipping Pte Ltd* [2023] 3 SLR 787 (where the Singapore court recognised, under Art 21(1)(*g*) of the Singapore Model Law, various Japanese orders in respect of, *inter alia*, the commencement of re-organisation proceedings and the approval of re-organisation plans), and the unreported case of *Re CFG Peru Investments Pte Ltd* HC/OS 665 of 2021 (21 September 2021) (where the Singapore court recognised a US Chapter 11 plan and confirmation order under the Singapore Model Law, but did not specify whether this relief was granted under section heading of Art 21(1) or Art 21(1)(*g*) of the Singapore Model Law (see HC/ORC 5320/2021 in HC/OS 665/2021 at para 2)).

opportunity to be heard and that relevant creditors and shareholders are adequately protected, as encapsulated in Art 22(1). In that case, as US Chapter 11 proceedings in respect of the two entities in question were recognised as main proceedings, the Singapore court granted additional relief under Art 21(1)(*g*) to recognise and enforce the US Chapter 11 plans and confirmation orders. Despite the fact that the outer limits of such recognition under Art 21(1)(*g*) of the Singapore Model Law will have to be worked out in subsequent cases, this decision is significant as it signals a broader approach towards interpreting the Singapore Model Law as regards the enforcement of foreign judgments.[55] This is contrasted with the approach of the Supreme Court of the United Kingdom in *Rubin v Eurofinance SA*,[56] which viewed that the Model Law as enacted in the UK did not cover the recognition of judgments.

45 These cases implicate, at least partially, underlying questions relating to choice of law. The cross-border insolvency of a multinational enterprise gives rise to classic conflict of laws situations, replete with choice of law concerns. This includes, *eg*, the extent to which the insolvency law of one jurisdiction can apply extraterritorially to govern the distribution of the debtor's assets in another jurisdiction, the expectations of the creditors and other stakeholders as to the law that will apply to the debtor's insolvency, and the extent to which the different jurisdictions involved in the insolvency proceedings will co-operate and co-ordinate with each other.[57]

46 Although the Model Law does not resolve these choice of law concerns, it does provide a choice of forum rule, through the COMI test. The COMI test under the Model Law is used to distinguish the treatment accorded to the foreign proceeding after it is recognised by the local court. The original framers of the Model Law had considered, but ultimately did not pursue, other options and formulations, including, most notably for the purposes of this article, the applicable law of the main proceeding rule.[58] Hence, the Model Law is deliberately neutral on choice of law, which is eminently understandable given the original framers of the Model Law were faced with designing, for the first time, an international framework for cross-border insolvency. The development of specific choice of law rules fell largely outside its scope and solutions

55 For detailed discussion, see Harold Foo & Beverly Wee, *Annotated Guide to the Singapore Insolvency Legislation: Corporate Insolvency* (Academy Publishing, 2023) ch 14, at paras 14.195–14.197.

56 [2012] 3 WLR 1019.

57 Jenny Clift, "Choice of Law and the UNCITRAL Harmonization Process" (2014) 9 Brook J Corp Fin & Com L 20 at 26.

58 Jenny Clift, "Choice of Law and the UNCITRAL Harmonization Process" (2014) 9 Brook J Corp Fin & Com L 20 at 26 and 28–30.

were therefore found that did not require the difficult issues relating to choice of law to be addressed directly.[59]

47 This choice of law neutrality of the Model Law leaves it open to the courts to determine the scope of relief in their own jurisdiction, depending on its interpretation on the choice of law issues. The Model Law neither insists (in one direction) nor prohibits (in the other) that the recognising court apply the insolvency law of the foreign proceeding, for which recognition of and assistance to is sought. In the more than two decades since UNCITRAL's promulgation of the Model Law in 1997, divergent approaches have developed to requests for relief, particularly those that implicate underlying choice of law questions.

48 Some jurisdictions view that recognition of the foreign proceeding has its own effects and does not directly import the consequences of foreign law into the local insolvency system.[60] Local courts will try, where they view it permissible, to provide foreign representatives with direct assistance under *local insolvency law* without the foreign representative needing to commence a duplicative, parallel insolvency proceeding.[61] One of the consequences of this approach is that it ensures recognising courts are not corralled into applying foreign law.

49 Some jurisdictions have gone further: namely, that the recognising court defers to the insolvency law of the main proceeding. This embraces the concept of a dominant main proceeding that is presumptively entitled to administer the debtor's worldwide insolvency in the jurisdiction where the debtor has its COMI and in accordance with the insolvency law of the COMI jurisdiction. It is, however, balanced against the recognising court retaining discretion for not co-operating, or conditioning its co-operation with the proceeding in the COMI. This discretion may be exercised having regard to local public policy or stakeholder concerns.[62] In this way, the COMI analysis functions as both a choice of forum and

59 Jenny Clift, "Choice of Law and the UNCITRAL Harmonization Process" (2014) 9 Brook J Corp Fin & Com L 20 at 27.

60 This is generally in line with the Model Law's Guide to Enactment: see *UNCITRAL Model Law on Cross-Border Insolvency (1997) with Guide to Enactment and Interpretation* (United Nations, 2014) at para 35.

61 See *eg*, *Re Rooftop Group International Pte Ltd* [2020] 4 SLR 680 at [26] and *Re Senvion GmbH (No 2)* (2019) 140 ACSR 20; [2019] FCA 1732 (which noted at [27] that, in the context of a main proceeding, "once recognition has been granted, the task of the Court is to identify the relevant parts of the Corporations Act … to be deemed to apply for the purposes of Article 20(2)". The court's role is to identify an appropriate comparator in local legislation to effect similar relief.).

62 See, more generally, Allan L Gropper, "The Curious Disappearance of Choice of Law as an Issue in Chapter 15 Cases" (2014) 9 Brook J Corp Fin & Com L 57.

choice of law rule. This has been regarded as incrementally advancing a universalist agenda.[63]

50 Notwithstanding that these issues are discussed here in the context of the Model Law, these matters are by no means specific to the Model Law and constitute a developing area of law. They are part of the broader genus of choice of law issues in cross-border insolvency matters. Other aspects of these issues include the *Gibbs* principle, which was analysed in detail above.[64] This remains a developing area of law. For example, the UNCITRAL Working Group V (Insolvency Law) is working on an ongoing project on applicable law.

VI. The Judicial Insolvency Network

51 Though there remain areas for further harmonisation and legislative efforts at the international level, judges can and have been actively engaged in, establishing and developing mechanisms for co-operation and communication that will lead to more effective transnational co-ordination of cases in line. Past experience in complex cross-border insolvencies such as Lehman Brothers and Nortel has highlighted the importance of effective communication and co-operation between courts. However, communication between courts in parallel insolvency proceedings has previously been scarce or on an *ad hoc* basis. This created uncertainty, delays and at times conflicting court orders. Whilst the Model Law goes some way to plugging this gap, the practical reality is that, despite the positive adoption rate by 58 states in a total of 61 jurisdictions to date, it may take some years before the Model Law is universally embraced.

52 Besides bilateral efforts and agreements between courts that foster greater interconnectedness,[65] there is also a global network of insolvency judges under the JIN. In October 2016, the Supreme Court of Singapore hosted a conference in Singapore which was attended by insolvency

63 See John Pottow, "Procedural Incrementalism: A Model for International Bankruptcy" (2005) 45 VA J Int'l L 935.

64 While falling outside the scope of this article, it is useful to note, for completeness, that the EU Insolvency Regulation (Regulation (EU) 2015/848 of the European Parliament and of the Council of 20 May 2015 on insolvency proceedings (recast)) deals with jurisdiction, applicable law and cross-border recognition and assistance of insolvency proceedings within the EU. This is part of the body of supranational law directly applicable in EU Member States.

65 This includes the Malaysia–Singapore "Protocols on Court-to-Court Communications and Cooperation in Admiralty, Shipping and Cross-Broder Corporate Insolvency Matters", which came into effect in July 2021.

judges from ten jurisdictions[66] and resulted in the establishment of the JIN. As a network of insolvency judges from across the world, the JIN provides a platform for sustained and continuous engagement in the field of cross-border insolvency and debt restructuring. Specifically, the JIN aims to provide judicial thought leadership, develop best practices and facilitate communication and co-operation amongst national courts.

53 At the inaugural JIN conference, the participating judges produced a best practice guide to assist stakeholders in a cross-border insolvency to develop protocols for court-to-court communication and co-operation ("JIN Guidelines") – in brief, this creates a methodology for identifying conflicts and issues, and determining a sequence in which those issues should be resolved, with each court aware of what the other court is doing without interfering directly with each court's jurisdiction or affecting substantive rights. A key issue that the JIN Guidelines aim to address is that arrangements for co-ordination of proceedings were mostly done on an *ad hoc* basis, which lead to delays and uncertainty. The JIN Guidelines, thus, seek to ameliorate this by providing a framework for parties in cross-border proceedings to customise protocols to facilitate communication and co-operation between courts. Hence, it addresses key aspects of, and modalities for, communication and co-operation amongst courts, insolvency representatives and other involved parties, including the conduct of joint hearings. This ultimately reduces costs (by avoiding expensive and time-consuming jurisdictional conflicts), minimises the risk of inconsistent decisions between courts and preserves enterprise value.

54 To date, the JIN Guidelines have been adopted by 16 jurisdictions,[67] including some that do not have representation in the

66 The inaugural Judicial Insolvency Network conference was attended by judges from the following jurisdictions:

(a) North America: the United States Bankruptcy Court for the District of Delaware and Southern District of New York, and the Superior Court of Justice (Ontario, Canada).

(b) Caribbean: the Supreme Court of Bermuda, the Eastern Caribbean Supreme Court, the British Virgin Islands, and the Grand Court of the Cayman Islands.

(c) Europe: the Court of Appeal of England and Wales.

(d) Asia: the Supreme Court of Singapore and the High Court of Hong Kong SAR (as an observer).

(e) Australia: the Supreme Court of New South Wales and the Federal Court of Australia.

67 The United States Bankruptcy Court for the District of Delaware, the Supreme Court of Singapore, the United States Bankruptcy Court for the Southern District of New York, the Supreme Court of Bermuda, the Chancery Division of England and Wales, the Eastern Caribbean Supreme Court, the Supreme Court of New South Wales, the United States Bankruptcy Court for the Southern District of Florida, the

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JIN.[68] In recognition of its importance, the JIN Guidelines received the "Most Important Overall Development" award presented by the Global Restructuring Review in June 2017.

55 The JIN is integral to effective and efficient resolution of cross-border insolvency proceedings. Its continually increasing membership, which covers different legal traditions within its fold,[69] facilitates greater understanding of different legal systems. In turn, this deeper understanding is likely to foster more effective communication and co-operation and a convergence in judicial thinking and philosophies in cross-border debt restructuring and insolvency matters.

VII. The Singapore International Commercial Court

56 Lastly, with the rapid development of international insolvency law, Singapore also took a step forward to provide a conducive forum that matches and reflects the internationality of cross-border insolvency proceedings, namely the SICC. The SICC was established in 2015 to hear transnational commercial matters and draws on the expertise of some of the world's leading commercial judges.[70] This international commercial court provides greater options for transnational businesses to resolve their financial distress, drawing on the expertise of international judges, lawyers and insolvency practitioners who are well-attuned to administer the relevant chosen or applied law in a manner that is sensitive to the international and commercial nature of the proceedings.

Seoul Bankruptcy Court, the Grand Court of Cayman Islands, the United States Bankruptcy Court for the Southern District of Texas, the Commercial List of Users' Committee of the Superior Court of Justice Ontario (Commercial List), the District Court Midden-Nederland (the Netherlands), the Federal Court of Australia and the Supreme Court of British Columbia, Brazil.

68 Adoption of the *Guidelines for Communication and Cooperation between Courts in Cross-Border Insolvency Matters* (issued at the Judicial Insolvency Network Conference (10–11 October 2016)) ("JIN Guidelines") is not a prerequisite to membership in the JIN; conversely, a court which does not have representation in the JIN may also adopt the JIN Guidelines.

69 This includes judges from: (a) the United States Bankruptcy Court for the Southern District of Florida; (b) the National Commercial Court of Argentina; (c) the Sao Paolo State Court of Justice, First Bankruptcy Court of Sao Paolo, Brazil; (d) the Seoul Bankruptcy Court; (e) the United States Bankruptcy Court for the Southern District of Texas (as an observer); (f) the Tokyo District Court (as an observer); and (g) the Supreme Court of Japan (as an observer).

70 This includes International Judge Christopher S Sontchi, former Chief Bankruptcy Judge of the United States Bankruptcy Court for the District of Delaware, who was appointed to the SICC on 4 July 2022.

57 The SICC's jurisdiction was legislatively clarified in 2022 to cover cross-border insolvency cases, which typically involve transnational and inter-connected issues with a mix of foreign and local law, and a mix of law and fact.[71] Additionally, to facilitate the efficient and effective presentation of arguments and resolution of cross-border proceedings, the SICC may grant permission to registered foreign lawyers to appear and plead in such proceedings.[72] This facilitates collaboration between the local and foreign lawyers to resolve such cases before the SICC. Lastly, foreign-qualified and foreign-based insolvency practitioners may also apply for an insolvency practitioner's licence under the IRDA to act in cross-border insolvency cases in the SICC.[73] Subject to meeting the requisite statutory requirements in order to be granted a licence, parties may appoint their insolvency practitioner of choice, be it a foreign or local practitioner, in SICC proceedings.

58 As the SICC is part of the Supreme Court of Singapore and is a division of the General Division of the High Court, SICC proceedings and judgments may be recognised and enforced in a similar manner to other Singapore proceedings and judgments. In the insolvency context, Singapore proceedings and officeholders have been recognised under other jurisdictions' enactment of the Model Law, including in Australia, Brazil, the UK and the US, and also in jurisdictions that have not adopted the Model Law, including in Indonesia, China and Hong Kong.[74]

VIII. Conclusion

59 The increasingly borderless nature of commerce regionally and globally, and dispersed creditor and investor bases, sharpens the focus on co-operation and co-ordination amongst jurisdictions to resolve cross-border insolvencies efficiently and effectively. This has influenced a broad trend, including in Singapore, towards a more universalist approach in recognising and assisting cross-border insolvency proceedings. This article has highlighted various developments in Singapore, such

71 See s 18D(2) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed), inserted via s 56 of the Courts (Civil and Criminal Justice) Reform Act 2021 (Act 25 of 2021). This provision was brought into force on 1 October 2022.

72 See ss 36P(1A) and 36P(1B) of the Legal Profession Act 1966 (2020 Rev Ed), inserted via s 2 of the Legal Profession (Amendment) Act 2022 (Act 8 of 2022). This provision was brought into force on 1 October 2022.

73 See amendments to Reg 5 of the Insolvency, Restructuring and Dissolution (Insolvency Practitioners) Regulations (S 617/2020), which came into force on 1 May 2023.

74 For further discussion see Harold Foo & Beverly Wee, *Annotated Guide to the Singapore Insolvency Legislation: Corporate Insolvency* (Academy Publishing, 2023) ch 14, at paras 14.064–14.065.

as the evolution of its common law and legislative amendments that internationalised Singapore's cross-border insolvency laws. The latter includes, most notably, the adoption of the Model Law, which provides a comprehensive statutory framework for addressing recognition and assistance in cross-border insolvency cases. Together with Singapore's growing jurisprudence and broader developments, such as the JIN and the SICC, Singapore's cross-border insolvency regime has evolved tremendously. This evolution has been undergirded to a large extent by an increasing emphasis on the principles of (modified) universalism. Moving forward, Singapore will undoubtedly continue to develop along these principles in the future.