THE EVOLUTION OF CROSS-BORDER INSOLVENCY IN SINGAPORE

The global financial crisis and economic crisis in the wake of COVID-19 have highlighted the need for co-operation between states in an economically interconnected world. Building on the concept of comity, the common law has developed to facilitate co-operation between countries but, through cases like *Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux* (1890) LR 25 QBD 399, the common law in some jurisdictions has pushed back against this trend. As a regional financial centre, Singapore was a leader in developing a common law regime to recognise and assist foreign insolvency proceedings and became the second South-East Asian country to adopt the UNCITRAL Model Law in 2017. This article critically analyses the evolution of cross-border insolvency law in Singapore from the colonial era to the contemporary parallel common law and statutory regimes and the unique characteristics of Singapore schemes.

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I. Introduction

1 Early insolvency law, whether personal bankruptcy or the liquidation of companies, primarily focused on the collection of debts for the benefit of creditors. Early English cases, dating as far back as the 18th century,[1] were decided at a time when an individual's domicile was more certain and business was primarily conducted locally. International trade, commerce, and communication were practically non-existent by today's standards, and any co-operation between states was based on the principle of comity or the mutual respect between courts and judges. The territorial approach to cross-border insolvency at that time was reasonable for a society that stands in stark contrast to a financially complex and

1 *Solomon v Ross* (1764) 1 H BL 131. See also Kurt Nadelmann, "*Solomons v. Ross* and International Bankruptcy Law" (1946) 9(2) *The Modern Law Review* 154.

internationally connected world with international financial centres like Singapore. This article explores the development of cross-border insolvency law in Singapore, addressing not only the statutory regimes and development of the common law, but also the leadership role the jurisdiction has played in fostering co-operation between jurisdictions to facilitate the realisation of the universalist ideal.

2 This article is divided into six Parts. After this brief introduction, Part II provides a history of legal reforms involving corporate insolvency in Singapore dating back to its colonial past and provides a background for the following Parts. Part III introduces Singapore's corporate restructuring and insolvency regimes, namely the scheme of arrangement and judicial management. While not focusing specifically on cross-border insolvency, this Part discusses Singapore's infusion of characteristics of the US Chapter 11 procedure into the domestic scheme structure, an endeavour taken in part to attract foreign companies to restructure in Singapore and avail themselves of the robust restructuring framework. This hybrid approach merges the flexibility of schemes with beneficial tools previously unique to the US Chapter 11 corporate bankruptcy procedure. The statutory and common law approaches to cross-border insolvency are addressed in Part IV. This Part is further divided into three parts, first addressing Singapore's development of the common law to facilitate the recognition and support of foreign insolvency proceedings, promoting universalism. Part IV then addresses Singapore's adoption of the UNCITRAL Model Law on Cross-border Insolvency ("Model Law") before moving on to discuss the important leadership role Singapore has played via judicial diplomacy in the establishment of the Judicial Insolvency Network ("JIN") and the Singapore International Commercial Court ("SICC"). Part V is a discussion highlighting the important role the Judiciary has played in developing the common law and, through the JIN, providing standards to facilitate communication and co-operation between courts. This article further argues that, while the leadership of the Judiciary has been essential up to this point, much of the further developments will need to be directed by parties to insolvency proceedings. The article then concludes in Part VI.

II. History of reforms

3 In 2017, Singapore implemented significant reforms to its corporate insolvency framework to modernise and strengthen its position as a regional restructuring hub.[2] These reforms included incorporating

2 Gerard McCormack & Wai Yee Wan, "Transplanting Chapter 11 of the US Bankruptcy Code into Singapore's Restructuring and Insolvency Laws: Opportunities and *(cont'd on the next page)*

elements of Chapter 11, a bankruptcy process in the US, into the domestic schemes structure.[3] The aim was to provide debtors with additional tools not typically available in schemes, such as an enhanced moratorium, cross-class cramdown, pre-packs and super-priority financing.[4]

4 These reforms were a long time coming. In 2010, the Insolvency Law Review Committee ("ILRC") was established in Singapore to review and propose reforms to the country's personal bankruptcy and corporate insolvency regimes.[5] The ILRC's final report in 2013 recommended modest reforms. However, in 2015, another committee was formed, *ie*, the Committee to Strengthen Singapore as an International Centre for Debt Restructuring.[6] This committee focused on suggesting reforms to Singapore schemes by incorporating aspects of the US Chapter 11 bankruptcy framework into the more flexible scheme structure. The committee published its report in 2016, and, as per their recommendations, the Singapore Parliament amended the Companies Act in 2017 through the Companies Amendment Act 2017, causing reforms to come into effect on 23 May 2017, and subsequently through the Insolvency, Restructuring and Dissolution Act 2018 ("IRDA"), which came into force on 30 July 2020.[7]

Challenges" (2019) 19(1) *Journal of Corporate Law Studies* 69; Alfino Zijian Eu, "Disclosure Obligations of a Debtor under the Singapore Scheme of Arrangement: Lessons from England and the US" (2022) 31(1) *International Insolvency Review* 23.

3 Casey Watters & Paul Omar, "The Evolution of Corporate Rescue in Singapore" (2019) 27(1) *Insolvency Law Journal* 18; Meng Seng Wee, "Whither the Scheme of Arrangement in Singapore: More Chapter 11, Less Scheme?" (2017), available at: <https://ssrn.com/abstract=2922956> (accessed 19 September 2023); Wee Meng Seng & Hans Tjio, "Singapore as International Debt Restructuring Center: Aspiration and Challenges" (2021) 57(1) Tex Int'l LJ 1.

4 Meng Seng Wee, "The Singapore Story of Injecting US Chapter 11 into the Commonwealth Scheme" (2018) 15(3) *European Company and Financial Law Review* 553.

5 Ken Chuanzhong Teo, "A Critical Evaluation of the New Cram-Down Tool in Singapore's Restructuring Regime" (2021) 30(2) *International Insolvency Review* 267; Stacey Steele, Ian Ramsay & Miranda Webster, "Insolvency Law Reform in Australia and Singapore: Directors' Liability for Insolvent Trading and Wrongful Trading" (2019) 28(3) *International Insolvency Review* 363-391; Kannan Ramesh, "Cross-Border Insolvencies: A New Paradigm", speech at the International Association of Insolvency Regulators' Annual Conference and General Meeting 2016 (6 September 2016).

6 Stacey Steele, "Singapore's Bid to Become International Debt Restructuring Hub" (2017) 29(4) *Australian Restructuring Insolvency & Turnaround Association Journal* 20; Steven Golden, "The Delaware of Asia" (2017) 36(8) *American Bankruptcy Institute Journal* 24; Jennifer Payne, "The Continuing Importance of the Scheme of Arrangement as a Debt Restructuring Tool" (2018) 15(3) *European Company and Financial Law Review* 445.

7 Aurelio Gurrea-Martínez, "Building a Restructuring Hub: Lessons from Singapore" *Singapore Management University School of Law Research Paper* 16 (2021);

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III. Singapore restructuring regimes

5 As a former English colony, Singapore's bankruptcy laws closely align with those of England's. Even after gaining independence in 1962, many colonial laws remained in effect. *Schemes of arrangement* (referred to as "*schemes*") are similar in both jurisdictions, although they are more commonly used for insolvent companies in Singapore and are recognised as an insolvency proceeding under Singapore law. Another restructuring option available for companies is *judicial management*, which is based on the administration process outlined in the UK Insolvency Act 1986.[8]

A. Schemes of arrangement

6 Singapore's insolvency framework, which emphasises clear rules, efficient rehabilitation of viable companies and liquidation of non-viable ones, has historically had one of the highest recovery rates for secured creditors globally, with a recent World Bank report placing the rate of return at 88.7 cents to the dollar.[9] Moreover, schemes based on English law also allow for compromises or releases not only against the debtor companies, but also against third parties, including entities that have provided guarantees.[10] Such schemes have been employed to release liabilities of third parties, such as directors and controlling shareholders, in relation to tortious actions or breaches of securities laws. Additionally, debtor companies can obtain a moratorium or stay on enforcement of claims during the restructuring process, allowing time for the formulation of a restructuring plan. Singapore had a statutory moratorium in place even before the 2017 reforms, while the UK only introduced the moratorium recently through the UK Corporate Insolvency and Governance Act 2020.[11] In certain cases, the Singapore High Court has extended the moratorium to subsidiaries of insolvent entities,[12] following a similar approach seen in other jurisdictions.

Raelene Pereira, "Singapore Court of Appeal settles Controversy on when a Grant of Security to cover Existing Indebtedness may amount to a Transaction at an Undervalue" (2023) 39(2) *Banking & Finance Law Review* 304.

8 c 45.

9 "Business Ready (B-READY)" *World Bank* <http://www.doingbusiness.org/en/re forms/overview/economy/Singapore> (accessed 19 September 2023); Wai Yee Wan, Casey Watters & Gerald McCormack, "Schemes of Arrangement in Singapore: Empirical and Comparative Analyses" (2020) 94(3) *American Bankruptcy Law Journal* 463 at 470; but see Mohan Gopalan, "Creditor schemes of arrangement and dissenting creditor protection" (2018) 30(2) SAcLJ 902.

10 See *Empire Capital Resources Pte Ltd* [2018] SGHC 36 and *Pathfinder Strategic Credit LP v Empire Capital Resources Pte Ltd* [2019] 2 SLR 77.

11 c 12.

12 See, *eg*, *Re Taisoo Suk* [2016] 5 SLR 787.

(1) Moratorium

7 The reforms introduced an enhancement to the moratorium, which is a pause on legal proceedings or debt collection efforts against a struggling company. In contrast to the US, where Chapter 11 provides an automatic stay, England and Singapore initially had discretionary moratoriums.[13] However, in 2017, Singapore introduced a mandatory 30-day moratorium that begins when the court is petitioned for protection.[14] This can be extended and be subjected to conditions established by the court to protect creditors. Unlike the US Bankruptcy Code's statutory injunction, which has a global effect, the Singaporean version of the moratorium only applies within the country's territorial jurisdiction.

8 The reforms also introduced cross-class cramdown, modelled after Chapter 11,[15] and designed to safeguard dissenting creditors, while allowing for the implementation of a scheme despite objections from a minority of creditors. This allows for a restructuring plan to be confirmed, even if some impaired creditor classes have not approved it, as long as the plan is fair and reasonable and does not unfairly discriminate between classes. In Singapore, the scheme must be approved by at least one class of creditors and by a majority representing at least three-quarters of the value of all claims subject to the scheme. While this protects creditors, the fact that shareholders' equity is not compulsorily divested before cramdown can be exercised increases the likelihood that companies will seek to restructure.[16]

13 Casey Watters & Paul Omar, "The Evolution of Corporate Rescue in Singapore" (2019) 27(1) *Insolvency Law Journal* 18; Casey Watters, "Singapore Amends Companies Act to Strengthen Its Role as a Regional Restructuring Hub" (2017) 38(9) *Company Lawyer* 293.

14 Thim Wai Chen, Ruzita Azmi & Rohana Abdul Rahman, "Rehabilitation of Abandoned Housing Projects in Peninsular Malaysia: Reaching out to Rescue Mechanisms in the Companies Act 2016" (2022) 14(2/3) *Journal of Property, Planning and Environmental Law* 61.

15 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 70; Ken Chuanzhong Teo, "A Critical Evaluation of the New Cram-Down Tool in Singapore's Restructuring Regime" (2021) 30(2) *International Insolvency Review* 267.

16 See s 70(4)(*b*)(ii)(B) of the Insolvency, Restructuring and Dissolution Act 2018.

(2) Rescue financing and Re Attilan Group Ltd

9 The 2017 reforms introduced rescue financing to Singapore schemes.[17] The Singapore approach has multiple levels of enhanced priority.[18] *Re Attilan Group Ltd* was the first case to address enhanced priority funding. Attilan Group Limited ("Attilan"), a holding company based in Singapore and listed on the Singapore Exchange, operated various media and education-related businesses. One of its creditors, Phillip Asia Pacific Opportunity Fund Ltd, objected to granting Attilan enhanced priority status, arguing that it must first demonstrate reasonable efforts to obtain financing without such preferential treatment. However, the judge found insufficient evidence that Attilan had attempted to secure funding through a source other than one with enhanced priority status. Despite an affidavit addressing discussions on securing financing, the evidence did not demonstrate any efforts made by Attilan to obtain financing without such preferential treatment.

10 Section 211E(1)(*a*) of the Companies Act does not explicitly require that the debtor is unable to secure financing without enhanced status.[19] In *Re Attilan Group Ltd*, the court held that it should be satisfied that financing was not available through less disruptive means when exercising its discretion in granting enhanced status. The court noted the similarity between s 211E(1)(*a*) and § 364(b) of the US Bankruptcy Code, although they are not identical, both statutory provisions provide "considerable latitude to judicial discretion". However, the court found that the US case law regarding § 364, although persuasive, could not be directly applied to Singapore due to differences in statutory language.

(3) UNCITRAL Model Law on Cross-Border Insolvency

11 In addition to domestic scheme reforms, the Companies (Amendment) Act 2017[20] also adopted the Model Law.[21] Furthermore, it redefined schemes as insolvency proceedings and eliminated the previous provision requiring the ring-fencing of assets to first pay

17 Malika Tiwari, "Rescue Financing in Light of the Insolvency and Bankruptcy Code, 2016: Success, Challenges and Inspirations" (2021) 8 GNLU L Rev 375; Casey Watters, "Standards for Rescue Financing Under Singapore Schemes of Arrangement: *Re Attilan Group Ltd*" (2019) 40(8) *Company Lawyer* 257; Aedit Abdullah J, "Bid for Perfection" (2018) 37 Int'l Fin L Rev 17.

18 See s 67 of the Insolvency, Restructuring and Dissolution Act 2018.

19 Casey Watters, "Standards for Rescue Financing Under Singapore Schemes of Arrangement: *Re Attilan Group Ltd*" (2019) 40(8) *Company Lawyer* 257.

20 Act 50 of 2017.

21 Gerard McCormack & Wai Yee Wan, "The UNCITRAL Model Law on Cross-border Insolvency Comes of Age: New Times or New Paradigms" (2018) 54 Tex Int'l LJ 273; Wai Yee Wan & Gerard McCormack, "Implementing Strategies for the Model

domestic creditors. These reforms, along with others, were integrated into a comprehensive insolvency bill in 2018 known as the IRDA. The IRDA not only incorporated these reforms, but also introduced a complete overhaul of the personal bankruptcy system, establishing insolvency in a separate statute from the Companies Act.

B. Judicial management

12 Judicial management, similar to the original UK administration procedure, appoints a manager who reports to the court and leads the restructuring process. The process is now available without a court order.[22] Although not highly successful in rehabilitating companies, judicial management remains relevant for assessing a company's viability when creditors lack confidence in the management. Recent changes to the judicial management regime have made it a more attractive option for restructuring. However, judicial management is not the primary restructuring regime in Singapore and is often less effective as it displaces management. As such, judicial management is primarily a useful tool where a company may be viable but trust between creditors and management has eroded. Due to the more limited applicability of judicial management, the remainder of this article will focus on schemes, as an avenue for insolvency restructuring and liquidation.

13 Schemes, widely utilised in Singapore and preferred over judicial management, offer flexibility as debt restructuring tools. They allow for the cramming down of creditors within the same class if unanimous consent cannot be obtained. As previously noted, the scheme requires approval from the relevant classes of creditors, with a majority in number representing at least 75% in value. Once approved, the court must sanction the scheme for it to become effective. Overall, Singapore's insolvency regime, with its effective schemes and other tools, demonstrates its commitment to facilitating successful debt restructuring and creating a favourable business environment.

Law on Cross-Border Insolvency: The Divergence in Asia-Pacific and Lessons for UNCITRAL" (2020) 36(1) Emory Bankr Dev J 59; Gerard McCormack, *EU Insolvency Law* (Edward Elgar Publishing, 2022) ch 9.

22 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 94.

IV. Cross-border insolvency in Singapore

A. Singapore's development of the common law

(1) A historical introduction

14 Prior to 2017, Singapore lacked a comprehensive statutory structure for dealing with cross-border insolvency (whether of individuals or corporate entities). Singapore, in common with other countries, now part of the Commonwealth of Nations, "inherited" its bankruptcy and company law frameworks. However, there is no evidence that the mutual assistance provisions contained in the English Bankruptcy Acts of 1883[23] and 1914[24] (s 122 in the latter), which enjoyed a pedigree going back to powers for mutual aid, first introduced in the bankruptcy legislation of 1861,[25] were translated when the Straits Settlements received their first bankruptcy (and also company) ordinances in the 19th century. Later on, the country relied on provisions, such as the ancillary winding-up provisions found in other Commonwealth countries, first seen in UK corporate legislation in the 1920s,[26] and which permitted courts to open windings up to serve as local counterparts to procedures occurring in the home jurisdiction of the incorporated or registered entity. These corporate law provisions reflected views of the courts' inherent authority that go back to the seminal case of *Solomons v Ross*.[27] Also of use, albeit requiring some creativity, were provisions of judgments recognition and enforcement legislation.[28] Although an early framework for cross-border assistance was apparently available as a model,[29] it was not included in the 1960s legislation, albeit in bankruptcy, a solitary provision existed allowing for mutual recognition of bankruptcy orders.[30] However, in

23 Bankruptcy Act 1883 (c 52).

24 Bankruptcy Act 1914 (c 59).

25 Bankruptcy Act 1861 (c 134) ss 216–220, limited to co-operation between the various jurisdictions of the UK (then including Ireland). The successor legislation of 1869, by s 74, added a mutual assistance provision extending to every "British court elsewhere", a term defined to mean all courts of bankruptcy or insolvency jurisdiction in the then Empire.

26 See what are now ss 221 and 225 of the Insolvency Act 1986 (c 45) (UK).

27 *Solomons v Ross* (1764) 1 H Bl 131, discussed in Kurt Nadelmann, "*Solomons v. Ross* and International Bankruptcy Law" (1946) 9(2) *The Modern Law Review* 154. But see *Re China Underwriters and General Insurance Co Ltd* [1988] 1 MLJ 409, setting limits on the scope of assistance by a Singapore court to the Official Receiver of Hong Kong.

28 See *Re Tan Patrick, ex p Walter Peak Resorts Ltd* [1994] 2 SLR(R) 379, dissecting the use of the Reciprocal Enforcement of Commonwealth Judgments Act (Cap 264).

29 See Companies Ordinances 1940 (SS 49/1940) and 1946 (MU 13/1946) Pt XIII (not apparently transposed into successor legislation).

30 See Bankruptcy Act (Act 15 of 1995) s 155.

keeping with the ancillary assistance doctrine, the pre-2017 framework allowed the court to aid in the liquidation of a foreign company.

15 Globally, the concept of universalism in common law gained strength during the early 2000s, particularly through the Privy Council's ruling in *Cambridge Gas Transportation Corpn v Official Committee in Unsecured Creditors of Navigator Holdings plc*[31] ("*Cambridge Gas*") in 2006 and Lord Hoffman's opinion in *Re HIH Casualty & General Insurance*[32] ("*HIH*") in 2008.[33] However, this progress was short-lived as *Rubin v Eurofinance SA*[34] ("*Rubin v Eurofinance*") overturned *Cambridge Gas* and criticised Lord Hoffmann's views in *HIH*. In contrast, Singapore continued to advance universalism[35] after departing from the jurisdiction of the Privy Council in 1993. This system is more adaptable in recognising and supporting foreign insolvency proceedings compared to the statutory Model Law adopted.

16 While Singapore officially adopted the Model Law in 2017, the High Court incorporated the centre of main interests ("COMI") principle into common law universalism in 2016 through the case of *Re Opti-Medix*.[36] This ruling built upon a 1926 case[37] that recognised the court's authority to acknowledge and assist foreign judgments without specifying the particular proceedings to support when multiple jurisdictions are involved.

17 Certainty is one of the most important requirements within legal structures in financial hubs, including restructuring hubs. Building on the developments without the common law, the Singapore Supreme Court, in the wake of the enactments of the Companies (Amendment) Act 2017 and the IRDA, ruled on a number of important cases[38] providing guidance and certainty for companies and investors. These cases address

31 [2006] 3 WLR 689.
32 [2008] 1 WLR 852.
33 John Townsend, "International Co-operation in Cross-border Insolvency: *HIH Insurance*" (2008) 71(5) *The Modern Law Review* 811.
34 [2012] 3 WLR 1019.
35 Irit Mevorach, *The Future of Cross-border Insolvency: Overcoming Biases and Closing Gaps* (Oxford University Press, 2018).
36 [2016] 4 SLR 312.
37 *Re Lee Wah Bank Ltd* [1958] 2 MC 81.
38 For annual reviews of Singapore insolvency cases see Kelvin Poon & Sim Kwan Kiat, "Insolvency Law" (2017) 18 SAL Ann Rev 489; Kelvin Poon, Sim Kwan Kiat & Wilson Zhu, "Insolvency Law" (2018) 19 SAL Ann Rev 533; Kelvin Poon, Sim Kwan Kiat & Wilson Zhu, "Insolvency Law" (2019) 20 SAL Ann Rev 505; Kelvin Poon, Sim Kwan Kiat & Wilson Zhu, "Insolvency Law" (2020) 21 SAL Ann Rev 589; and Kelvin Poon, Sim Kwan Kiat & Wilson Zhu, "Insolvency Law" (2021) 22 SAL Ann Rev 508.

issues such as the test for insolvency,[39] the relationship between maritime and insolvency law,[40] rescue financing,[41] standards of disclosure[42] and the Model Law,[43] along with continued development of the common law.[44]

(2) Development of universalism in Singapore

18 The court's common law authority was extended in 2016 when the court held that proceedings outside the state of incorporation could be recognised and granted assistance. Although viewed as a significant development in the common law, this authority was first used by a Singapore court in 1926. However, the case was not immediately published, leaving many unaware of the earlier expansion of common law authority. This subsection will address key cases in the development of Singapore's common law authority to assist foreign insolvency proceedings.

(a) *Re Lee Wah Bank Ltd*[45] and *Beluga Chartering GmbH v Beluga Projects (Singapore) Pte Ltd*[46]

19 Singapore has been a leader in the development of the common law within the context of insolvency from an early stage. In 1926, in the absence of a statutory framework to recognise and assist foreign insolvency proceedings, Singapore recognised a foreign liquidator. This case, however, was not immediately published and was largely forgotten until Singapore again started down the path of developing its common law cross-border insolvency regime in 2014 with the case of *Beluga Chartering GmbH v Beluga Projects (Singapore) Pte Ltd* ("*Beluga Chartering*").

20 In *Beluga Chartering*, the Singapore Court of Appeal had to determine whether assets located in Singapore had to be held in Singapore to satisfy debts to Singapore creditors or could be remitted to the German liquidators of an insolvent German company. Based on a ring-fencing provision[47] that first required the payment of local debts, the High Court had originally ruled that local debts must first be paid before

39 *Sun Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] 2 SLR 478.
40 *The Ocean Winner* [2021] 4 SLR 526. In *The Ocean Winner*, the High Court held the filing of *in rem* admiralty writs did not fall under the automatic moratorium of s 211B(8) of the Companies Act, subsequently re-enacted as s 64 of the Insolvency, Restructuring and Dissolution Act 2018.
41 *Re Design Studio Group Ltd* [2020] 5 SLR 850; *Re Attilan Group Ltd* [2018] 3 SLR 898.
42 *Pathfinder Strategic Credit LP v Empire Capital Resources Pte Ltd* [2019] 2 SLR 77.
43 *Re Rooftop Group International Pte Ltd* [2020] 4 SLR 680; *Re Zetta Jet Pte Ltd* [2018] 4 SLR 801.
44 *Heince Tombak Simanjuntak v Paulus Tannos* [2020] 4 SLR 816.
45 [1958] 2 MC 81 (decided in 1926, though not published until 1958).
46 [2014] 2 SLR 815.
47 Companies Act (Cap 50, 2006 Rev Ed) s 377(3)(*c*).

assets could be remitted to the foreign liquidator. The Court of Appeal ruled that the ring-fencing provision, which was subsequently revoked in the 2017 insolvency reforms, did not apply to all foreign companies. As the debtor was not registered in Singapore nor was it required to register, the provision would not apply.

(b) *Re Opti-Medix Ltd*[48]

21 Building upon *Re Lee Wah Bank Ltd* and *Beluga Chartering*, the High Court further extended the court's common law authority in *Re Opti-Medix Ltd*. In that case, two companies that were incorporated in the British Virgin Islands had issued non-recourse notes governed by Singapore law and held the proceeds in a Singapore-based bank account. The companies ran into financial difficulties and, in 2015, corporate bankruptcy proceedings were initiated in the Tokyo District Court and a bankruptcy trustee was appointed to liquidate the entities. Using the court's inherent authority to recognise and assist foreign proceedings, the Singapore court broke with the UK Supreme Court case of *Rubin v Eurofinance*,[49] where the court held the COMI was a creature of statute and refused to develop the common law to adopt a form of modified universalism similar to the Model Law. Instead, the Singapore court embraced Lord Hoffman's approach in *HIH*,[50] where the House of Lords first signalled the intent to develop the court's common law authority to recognise and assist proceedings.

(c) *Re Gulf Pacific Shipping Ltd*[51]

22 A year prior to Singapore's adoption of the Model Law, the Singapore High Court highlighted its willingness to flexibly embrace common law universalism through *Re Gulf Pacific Shipping Ltd*.[52] In this case, the company to be wound up was a wholly-owned subsidiary of a company liquidated in Hong Kong and the liquidators applied for recognition in Singapore to obtain statements from a bank branch located in the country. A key issue was whether there was a distinction between voluntary and compulsory liquidation in the court's ability to recognise and assist foreign proceedings.[53] Building upon the decision

48 [2016] 4 SLR 312.
49 [2012] 2 WLR 121.
50 [2008] 1 WLR 852.
51 [2016] SGHC 287.
52 [2016] SGHC 287.
53 See also Charles Zhen Qu & Andrew Godwin, "Does the Common Law Power to grant Cross-border Insolvency Assistance apply to an Insolvency Winding-up that is Voluntary: The Reaction to *Singularis* from Singapore and Hong Kong" (2019) 28(3) *International Insolvency Review* 305.

in *Re Opti-Medix*[54] and referencing the US case of *In re Betcorp Ltd*,[55] the court rejected a distinction holding the purpose of recognising a foreign insolvency proceeding is to facilitate the orderly distribution of assets. Recognising and assisting a foreign proceeding would support this objective irrespective of the mechanism by which a company is wound up. The court held that recognising the COMI and a presumption the registered office of an enterprise is the COMI provides a default rule. However, this could be rebutted where, as in this case, the actual COMI was in a place other than that of registration. As such, the court was able to use its inherent authority to recognise and assist the bankruptcy proceedings in Japan, even though the companies were registered in the British Virgin Islands.

(d) *Re Taisoo Suk*[56]

23 Although the court's authority to remit assets for the foreign main proceeding was already established in Singapore's common law, *Re Taisoo Suk* established the framework for recognising and assisting foreign proceedings within Singapore, including by granting moratoriums within Singapore that extend to the subsidiaries of insolvent companies, a vital approach for assisting with the rescue of shipping companies and other businesses commonly structured as corporate groups. In this case, the court granted the moratorium emphasising the need for the orderly resolution and satisfaction of claims. The decision, while an important development in the Singapore's common law insolvency regime, also received criticism for not aligning with admiralty law, instead prioritising the Korean proceeding. This was a logical step not only from a legal perspective but also a business perspective. Absent an extension of the moratorium to Hanjin and all of its subsidiaries, these ships would not enter Singaporean waters to unload, increasing costs to the detriment of all creditors.

24 Additionally, the extension of the injunction to Hanjin's subsidiaries was controversial in that it challenges the norm by ignoring the separate legal identities of the subsidiaries. While an extension of the inherent powers of the court to support a foreign proceeding and extend a moratorium to the subsidiaries of the debtor may first appear as a significant extension of judicial authority, it also foreshadowed

54 [2016] 4 SLR 312.

55 400 BR 266 (Bankr D Nev, 2009).

56 [2016] 5 SLR 787. Minjee Kim, "Cross-border Insolvency and Debt Reconstructing Law Reform in Singapore: Reflections on the *Hanjin Shipping* Case" (2019) 19(2) *Australian Journal of Asian Law* 233-246; Casey Watters & Kenny Chng, "The Common Law Principle of Universality Extended in the Wake of Hanjin Shipping's Insolvency" (2018) 26(3) *Insolvency Law Journal* 158.

upcoming legalisation that now permits the extension of moratoriums to the subsidiaries of a debtor under a scheme of arrangement.

25 The three-stage test used in *Re Taisoo Suk* to determine the recognition of Korean rehabilitation proceedings, although based on common law, is strikingly similar to the approach under the Model Law, an important development that deviates from the approach taken in the UK, such as *Rubin v Eurofinance*. Instead, Singapore favoured the approach taken by the Privy Council in *Cambridge Gas* and the House of Lords decision in *HIH*, even though these cases were not explicitly referenced.

26 The decision further expands Singapore's common law authority in assisting foreign insolvency proceedings. Although Singapore has embraced the Model Law, the court's inherent power remains a versatile tool, especially for debtors, and the decision establishes a flexible common law regime for assisting foreign insolvency proceedings that now exists in parallel to the Model Law in Singapore.

(e) *Re Zetta Jet Pte Ltd*[57]

27 In 2018, the High Court ruled on the first Singapore case involving the Model Law, *Re Zetta Jet*. Revisiting the case in 2019,[58] the Singapore High Court addressed the COMI under the newly adopted Model Law. A US Chapter 11 restructuring was filed in the US for Zetta Jet USA and its parent company, Zetta Jet Singapore (referred to collectedly hereafter as "Zetta Jet"). In response to the filing in the US Bankruptcy court, a world-wide automatic statutory moratorium came into effect. Parties obtained an injunction from the Singapore courts to prevent Zetta Jet Singapore from continuing with the US proceeding. Nevertheless, the US proceeding continued and was converted to a Chapter 7 liquidation, in which the US court appointed a trustee over Zetta Jet and the trustee subsequently sought recognition of the US proceedings in Singapore.

28 The court considered that recognition should take place if the proceeding took place in the debtor's COMI. While it was clear that the COMI for Zetta Jet USA was in the US, the dispute centred around Zetta Jet Singapore. In deciding timing for determining the COMI, the court looked at several other jurisdictions. The English and European approach is to determine the COMI at the date of commencement of the foreign insolvency proceeding. The Australian approach is to use the date of the hearing to recognise the foreign proceedings. Finally, the US approach to use the date of filing the application for recognition. The High Court

57 [2018] 4 SLR 801.
58 [2019] 4 SLR 1343.

adopted the US approach reasoning that it more closely aligns with the language of the Model Law as adopted by Singapore and provides greater commercial certainty. At that point, the High Court determined that central management decisions for Zetta Jet Singapore were being conducted from the US and that a substantial percentage of creditors were based in the US. The court did not find the location of Zetta Jet's aircraft as highly significant in determining the location of the COMI, instead focusing on the management of the company. Additionally, the court found that the contempt from not following the earlier order did not prevent recognition but could be separately pursued. The next section of this Part continues to discuss Singapore's adoption of the Model Law.

B. Adoption of the Model Law

29 The lack of recognition and enforcement of schemes overseas posed difficulties for their use. While common law recognition was possible, jurisdictions following the Model Law were unlikely to recognise Singapore-based restructurings since schemes were not technically considered insolvency proceedings. This led to a system where schemes under the legislation had limited recognition and effect abroad, while common law authority allowed Singapore courts to assist foreign proceedings with more flexibility than domestic cases. However, the moratorium granted by the Singapore courts in relation to schemes only applied within Singapore, reflecting a territorialist approach to insolvency. To address this and provide certainty, Singapore both adopted the Model Law,[59] the second jurisdiction in Southeast Asia to do so after the Philippines, and defined Singapore schemes as insolvency proceedings to facilitate their recognition by other Model Law jurisdictions.

30 These changes were necessary for Singapore to lay the groundwork for becoming a regional restructuring hub. By enacting both a statutory framework to encourage recognition and assistance, as well as a common law framework, Singapore provided an example to other jurisdictions, increasing the chances of restructuring multinational entities.

59 See Third Schedule of the Insolvency, Restructuring and Dissolution Act 2018, previously adopted via the Companies (Amendment) Act 2017.

C. Judicial diplomacy: the Judicial Insolvency Network and protocols for court-to-court communication

(1) The Judicial Insolvency Network

31 Established in Singapore in 2016, the JIN[60] functions as a global network comprising insolvency judges and centres around three key objectives: (a) fostering judicial thought leadership; (b) formulating best practices for cross-border insolvency; and (c) facilitating co-operation and communication among courts across different jurisdictions. Initially, the JIN consisted of judges hailing from English-speaking common law jurisdictions; however, it has since expanded its membership to include judges from Argentina, Brazil, South Korea and Japan. Since its creation, the JIN has undertaken two major initiatives aimed at reducing barriers to transnational insolvencies, namely establishing guidelines for establishing protocols for court-to-court communication in insolvency proceedings and modalities for implementing protocols and facilitating court-to-court communication.

(2) The Judicial Insolvency Network's guidelines for court-to-court communication

32 The guidelines[61] are crafted with flexibility to empower parties to tailor protocols for the specific circumstances of an insolvency.[62]

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60 You Chuanman, "Reinventing Bankruptcy Law: A History of the Companies' Creditors Arrangement Act by Virginia Torrie" (Book Review) (2021) Sing JLS 416; James Sprayregen, "International Insolvency: From Punitive Regimes Toward Rescue Culture" (2020) 36(1) Emory Bankr Dev J 7; Rebecca Jarvis & Paul Sidle, "A Quiet Year Ahead: Don't Bet on It" (2018) 37 Int'l Fin L Rev 105; Rosalind Mason & Elizabeth Streten, "The Future of Cross-border Insolvency: Overcoming Biases and Closing Gaps" (2018) 27(3) *International Insolvency Review* 447.

61 JIN, "Guidelines for Communication and Cooperation Between Courts in Cross-Border Insolvency Matters" <https://www.jin-global.org/content/jin/pdf/Guidelines-for-Communication-and-Cooperation-in-Cross-Border-Insolvency.pdf> (accessed 19 September 2023).

62 Casey Watters, "Developing Protocols for Court-to-Court Communication in Insolvency Proceedings: A Limited Framework for Cooperation" in *Globalisation in Transition* (Umair Ghori *et al* eds) (Springer, 2023); Casey Watters, "Guidelines for Cooperation and Communication Between Courts in Cross-border Insolvency Matters: Too Far or Not Far Enough" (2017) 38(6) *Company Lawyer* 169; Emily Lee & Eric Ip, "Judicial Diplomacy in the Asia-Pacific: Theory and Evidence from the Singapore-initiated Transnational Judicial Insolvency Network" (2020) 20(2) *Journal of Corporate Law Studies* 389; Oriana Casasola & Stephan Madaus, "Cross-border Insolvency Protocols: Cooperation, Coordination, and Communication Duties under the European Insolvency Regulation Recast" (2022) 33(6) *European Business Law Review* 839; Shuai Guo, "Cross-border insolvency between Chinese Mainland and Hong Kong: The Past, the Present, and the Future" (2022) 30(1) *Asia Pacific Law Review* 70.

This adaptability facilitates collaboration by preventing administrative hurdles or prescriptive processes that might clash with the domestic laws in a jurisdiction.

33 The first three guidelines hinge on procedural aspects, urging parties involved in insolvency cases across jurisdictions to establish court-to-court communication protocols early in the process. This step is essential in streamlining the proceedings. Guidelines 4 and 5 underscore that the guidelines are procedural in nature and do not impact substantive rights. The guidelines are not equivalent to a treaty or domestic law, like the Model Law. As such, they cannot permit actions inconsistent with domestic law. The flexibility of the law, however, permits it use to the extent possible.

34 As set out in Guideline 6, the guidelines should be interpreted in the context of the international law, including modified universalism and the Model Law. To expediently manage parallel proceedings, a level of adaptability is essential to enable co-ordination. Guidelines 7 and 8 address the nuances of court communication. One of the most critical aspects of these guidelines is that parties should ordinarily be present for communications between courts and that there should be a record of communications. Guidelines 12 to 14 are also important in reducing the burden on courts and, barring valid objection, allow courts to recognise forcing statues and deem documents as authentic.

35 The effectiveness of these guidelines flows from their flexibility. Although they will not remove all barriers and legal differences, they reduce the risk of inconsistent orders by facilitating communication. Importantly, the guidelines emphasise that parties should be present when courts communicate.

(3) The Judicial Insolvency Network Modalities for Court-to-Court Communication

36 The establishment of modalities[63] by the JIN has added clarity for those seeking to establish protocols to facilitate court-to-court communication and for courts in implementing protocols. However, the modalities provide several challenges including *ex parte* communication,

63 JIN, "Modalities of Court-to-Court Communication" <http://jin-global.org/content/jin/pdf/Modalities_for_court-to-court_communication.pdf> (accessed 19 September 2023).

threats against confidentiality of information, risks inherent in translation of documents and a general lack of oversight.[64]

(a) *Ex parte* communications

37 The Modalities, while an important concept, undercut the protections inherent in the JIN Guidelines, permitting judges to initiate and engage in communication without the approval or presence of parties or their representatives. This not only poses risks to the parties but may detract from the perceived legitimacy of the process. The involvement of court officials who are not judges as intermediaries amplifies risks. Judicial rulings are well documented and subject to judicial review by higher courts. However, this may not be the case for other court employees. To alleviate this risk, all communications should be either in writing, with copies available to all parties, or recorded, with access to the recordings available. The existence of any communications and the contact person should also be made publicly available through formal channels, such as the courts website, to ensure transparency. The right to access communications is of little value if parties are unaware of *ex parte* communications taking place.

(b) Confidentiality

38 If parties establish the protocols they can limit the scope of court-to-court communications, thereby protecting privacy rights of parties. However, courts communicating without the consent of the parties risk violating the privacy rights of those parties. The degree to which information is protected varies between jurisdictions and information that is confidential in one may be subject to public disclosure requests in another. To protect the rights of parties, judges should adhere to the scope of communications decided by the parties through a protocol.

(c) Lack of oversight and separation of powers

39 The establishment of organisations, such as the JIN, and the establishment of the JIN Guidelines has been described as judicial diplomacy[65] and has enhanced co-operation between jurisdictions,

64 Melissa Jacoby, "Other Judges Cases" (2022) 72 *NYU Annual Survey of American Law* 39; Casey Watters & Kenny Chng, "The Common Law Principle of Universality Extended in the Wake of Hanjin Shipping's Insolvency" (2018) 26(3) *Insolvency Law Journal* 158.

65 Casey Watters & Kenny Chng, "The Common Law Principle of Universality Extended in the Wake of Hanjin Shipping's Insolvency" (2018) 26(3) *Insolvency Law Journal* 158; David Law, "Judicial Comparativism and Judicial Diplomacy" (2015) 163 *University of Pennsylvania Law Review* 927 at 1004 and 1023; Emily Lee & *(cont'd on the next page)*

thereby reducing costs. Diplomacy is traditionally the prerogative of the Executive branch and subject to legislative oversight, with political office holders accountable to the electorate. On the other hand, the Judiciary is limited to settling disputes which are brought before it and over which they have jurisdiction, limited in their discretion by a framework of statutes and, in the case of common law countries, case law. Superior courts serve as the mechanism of enforcing standards through judicial review. Disseminating confidential information about a current proceeding between judges in different countries without party consent disrupts this process. For example, if a judge in one jurisdiction communicates their intention to rule in a particular way and judges in other jurisdictions make consent orders, this could defeat the ability of a party to appeal that decision, especially if assets are already transferred. Information shared by one court may also be inadmissible in another jurisdiction, posing a risk to due process rights. To protect the parties, the court should carefully tailor its communications to the terms of the protocol that was proposed by the parties, thereby ensuring consent was freely obtained from all impacted parties and upholding the integrity of the judicial process.

40 Nations with similar legal systems, cultures, languages and levels of development may establish more flexible protocols via bilateral agreements through conventional diplomatic routes that ensure protection of the rights of parties. However, the role of the Judiciary in diplomacy, while having the potential for significant benefit, needs to be carefully curtailed to protect parties.

(4) The Singapore International Commercial Court

41 The SICC[66] was first launched in 2015 and[67] in 2022, the Singapore International Commercial Court (Amendment No 2) Rules 2022[68] and the Legal Profession (Representation in Singapore International

Eric Ip, "Judicial Diplomacy in the Asia-Pacific: Theory and Evidence from the Singapore-initiated Transnational Judicial Insolvency Network" (2020) 20(2) *Journal of Corporate Law Studies* 389; Fernanda Nicola, "Judges as Diplomats in Advancing the Rule of Law: A Conversation with President Koen Lenaerts and Justice Stephen Breyer" (2017) 66 *American University Law Review* 1159.

66 See Zhengxin Huo & Man Yip, "Comparing the International Commercial Courts of China with the Singapore International Commercial Court" (2019) 68(4) *International & Comparative Law Quarterly* 903; and Gary Bell, "The New International Commercial Courts – Competing with Arbitration – The Example of the Singapore International Commercial Court" (2018) 11(2) Contemp Asia Arb J 193.

67 Man Yip, "The Singapore International Commercial Court: The Future of Litigation" (2019) 12(1) Erasmus L Rev 82.

68 S 754/2022.

Commercial Court) (Amendment No 2) Rules 2022[69] came into force, granting jurisdiction over cross-border restructuring and insolvency to the SICC. Although the "SICC has an established reputation for neutrality",[70] the Singapore courts similarly are sophisticated and part of a mature legal system, familiar to and trusted by businesspeople and commercial and corporate lawyers, thus underpinning why Singapore is a financial hub. The SICC provides an additional resource in the context of cross-border cases because its incorporation of international judges brings in experience regarding the laws of multiple jurisdictions, something often important in the context of transnational insolvency and restructuring cases. In this respect, the SICC combines the benefits for national courts with those of arbitration, creating an ideal hybrid. For example, the SICC has the authority to join third parties who are not otherwise party to a jurisdiction agreement. This power is essential in the context of insolvency cases for jurisdiction to apply to creditors and other parties of interest. However, while duly registered foreign lawyers[71] may make submissions on matters unrelated to Singapore law, there are still limitations of foreign lawyers that may limit the willingness for lawyers from other jurisdictions to utilise the SICC in spite of Singapore's attractiveness as a commercial hub.

V. Discussion

42 Singapore's size and short history, compared to other major financial jurisdictions such as the UK and the US, may make it an unlikely place to lead in the development of the common law with respect to cross-border insolvency. However, these characteristics, combined with an entrepreneurial spirit and the pioneering efforts of justices such as Abdullah J and Ramesh J with respect to judicial opinions, writings and global leadership in the context of the JIN, have established Singapore as a leader in the field. This leadership, and the developments particularly with respect to the common law, stem in large part from the expertise and ingenuity of the Judiciary. Therefore, as the composition of the Judiciary changes in the future, it remains to be seen how this will impact the future development of Singapore's common law approach to cross-border insolvency.

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69 S 755/2022.

70 "New rules introduced for Singapore International Commercial Court to deal with cross-border corporate insolvency, restructuring and dissolution matters" *SG Courts* (5 October 2022) <https://www.judiciary.gov.sg/news-and-resources/news/news-details/media-release-new-rules-introduced-for-singapore-international-commercial-court-to-deal-with-cross-border-corporate-insolvency-restructuring-and-dissolution-matters> (accessed 19 September 2023).

71 See s 36P of the Legal Profession Act 1966 (2020 Rev Ed).

43 Many of the developments, such as the JIN Guidelines and modalities, are important tools to facilitate co-operation, reduce the cost of proceedings for the benefit of all parties, and reduce the risk of inconsistent orders. To date, all jurisdictions involved in these endeavours have developed economies with sophisticated and trusted judiciaries. Indeed, the initial JIN jurisdictions were all common law ones, highlighting the similarity between these jurisdictions and decreasing the risk to parties when courts between these jurisdictions directly communicate. While to date these developments have been beneficial, it is essential that the expansion of these initiatives takes into consideration the increased risk when jurisdictions have different legal systems, languages, or included jurisdictions in which citizens may have less confidence in the Judiciary.

44 The members of the JIN, and Singapore in particular, have been instrumental in laying frameworks to reduce costs in cross-border insolvency proceedings. This judicial leadership, while essential in the beginning, may and arguably should take a step back and place the impetus more on parties to a proceeding to propose their own protocols. While the frameworks established by the JIN are invaluable, leaving the decision to propose a protocol to the parties is often the best way to ensure all parties are protected and remove the risk of insults to one of the jurisdictions should there be a jurisdiction with which the parties are uncomfortable sharing information.

45 While not technically directed at cross-border insolvency, the amendments to schemes of arrangement first enacted in 2017 and later enshrined in the IRDA provide a range of additional tools not traditionally available in schemes of arrangement that make Singapore attractive as a jurisdiction to restructure insolvent companies. Singapore's adoption of the Model Law, the second East Asian country to adopt the Model Law, brings the statutory framework in line with the international standards adopted by most developed economies and brings a degree of certainty for multinational companies operating in Singapore and their creditors.

46 However, the Model Law, as the statutory mechanism of recognising and supporting foreign insolvency proceedings, exists in parallel to the common law. After *Re Taisoo Suk*, where the Singapore High Court used common law authority to extend a moratorium to subsidiaries of the foreign debtor, the common law regime is more flexible than the statutory regime. The ability to extend the moratorium to subsidiaries exists both under the common law with respect to cross-border insolvency and within the statutory framework for Singapore schemes. It is possible this was included for domestic schemes, but not under the Model Law to encourage restructuring within Singapore. It also appears likely that Singapore intentionally developed its common law framework for recognising and assisting foreign insolvency proceedings

prior to adopting the Model Law. This would be a brilliant attempt by the Singapore courts to provide a persuasive common law framework for other jurisdictions that are yet to adopt the Model Law.

47 By breaking with the UK approach and rejecting the principle in *Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux*[72] ("*Gibbs* principle"), laying this common law framework paves the way for other countries to recognise and assist restructurings under Singapore schemes of arrangement. With the additional tools now available under Singapore's hybrid schemes, this structure facilitates the ability of foreign companies to restructure in Singapore and avail themselves of the additional tools that may not be available in their jurisdiction. The increased chance of successful restructuring, therefore, benefits both jurisdictions. Countries that follow Singapore's common law approach to assisting foreign proceedings may realise these benefits. Importantly, Singapore has rejected the *Gibbs* principle, a challenging issue for many jurisdictions developing their national insolvency regimes,[73] rejecting the notion that all forum shopping is inherently bad and embracing the concept that some jurisdictions may have more tools available to assist in a successful restructuring, thereby benefiting all parties.[74]

48 The adoption of the Model Law itself does not directly benefit Singapore in that, under most circumstances, it does not increase the likelihood of a foreign jurisdiction recognising a Singapore scheme. However, it is a step towards embracing a global standard and being only the second Southeast Asian country to adopt the Model Law after the Philippines mirrors the common law developments in leading by example. The cost associated with deferring to foreign proceedings is outweighed by the potential gains for Singapore's economic landscape in that recognition of foreign proceedings enhances Singapore's reputation as a business-friendly jurisdiction and builds familiarity with Singapore courts and the SICC, increasing the likelihood of foreign companies using Singapore to restructure. Thus, the cost associated with supporting foreign proceedings, even when those foreign jurisdictions may not reciprocate, is outweighed by the benefits as foreign companies seek to avail themselves of legal services in Singapore and view it as a more attractive destination for investment. In support of Singapore's

72 (1890) LR 25 QBD 399. In the UK, the opportunity to review the application of the *Gibbs* rule resulted in its retention in the case of *Re OJSC International Bank of Azerbaijan* [2019] Bus LR 1130.

73 Sayak Banerjee & Akash Mukherjee, "*Gibbs* Principle: Examining India's New Cross-Border Insolvency Regime and Its Potential Challenges" (2020) 14(2) Insolvency & Restructuring Int'l 25.

74 Kannan Ramesh J, "The *Gibbs* Principle: A Tether on the Feet of Good Forum Shopping" (2017) 29 SAcLJ 42.

aspiration to be a regional centre for insolvency, universalist efforts are thus consistent with the Government's broader goal that Singapore should become a prominent financial, legal and business hub. In order to increase investments and support the growth of a modern legal services industry, Singapore seeks to provide enterprises with a convenient business base combining efficiency, knowledge as well as an explicit and secure legal framework.

49 The SICC is also an important but, as of yet, underutilised tool for the insolvency of multinational entities. In addition to domestic insolvency experts, such as Ramesh J and Abdullah J, the court has leading insolvency experts from around the world, including US Bankruptcy Court Judge and SICC Justice, Scott Sontchi,[75] and Lord Neuberger of Abbotsbury, who authored part of the judgment on the seminal case *Singularis Holdings v Price Waterhouse Coopers*.[76] Leveraging this global expertise not only highlights Singapore's international nature, but may attract business from jurisdictions further afield that are not yet familiar with Singapore.

50 Singapore's success stems largely from its focus on being a restructuring centre, specifically, rather than a general insolvency centre. Although early developments in cross-border insolvency primarily focused on liquidation, the winding up of a company is a zero-sum game. In contrast to restructuring, where a business continues to operate and can produce additional value for creditors and potentially shareholders, when the business ceases to operate, no new value is created. This reality has resulted in many jurisdictions employing formal and informal methods to protect local creditors and ensure their payment before any remaining assets are distributed to foreign creditors or proceedings. However, a focus on restructuring benefits all parties in that the rehabilitation of viable companies not only preserves the company for shareholders and employees but also increases the amount available for distribution to creditors.

51 This focus on restructuring, coupled with the additional tools integrated into Singapore's schemes that increase the likelihood of a successful restructuring, creates a framework that encourages other jurisdictions to collaborate with Singapore. This, coupled with the JIN's initiatives to facilitate communication between courts, provides

75 "Judges" *SICC* <https://www.sicc.gov.sg/about-the-sicc/judges> (accessed 19 September 2023).

76 *Singularis Holdings v PricewaterhouseCoopers* [2014] UKPC 36; see also Eugenio Vaccari & Emilie Ghio, *English Corporate Insolvency Law* (Edward Elgar Publishing, 2022) ch 17.

opportunities to reduce costs associated with insolvency proceedings for multinational entities. Singapore is distinguishing itself as the jurisdiction to promote international co-operation and provide a favourable environment for dealing with complex insolvency matters.

VI. Conclusion

52 Singapore's leadership in establishing a legal framework to support its role as a regional restructuring hub not only benefits the jurisdiction but serves as a case study of successful legal transplantation and reforms to insolvency laws. Unlike the many failed attempts at legal transplantation in other jurisdictions, Singapore's success hinges on taking a hybrid approach and only adopting the characteristic of foreign law that are beneficial to the domestic regime. Simultaneously, the development of a robust common law regime to recognise and support foreign proceedings provides a high degree of flexibility and a persuasive framework for other jurisdictions that may not have adopted the Model Law. The JIN has also been a significant forum for promoting understanding and co-operation between jurisdictions, with the establishment of guidelines for the establishment of protocols to permit court-to-court communication and the more recent adoption of the modalities. However, while beneficial, the initiative in proposing protocols should come from the parties to ensure the rights of parties in all jurisdictions are protected. Together, these reforms provide an important example for other countries seeking to reform their insolvency laws in the face of declining global economic conditions.