

18. INSOLVENCY LAW

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I. Introduction

18.1 The Singapore court decisions in 2025 covered a wide range of issues including those relating to bankruptcy, winding up, judicial management and the proof of debt regime. In addition, the Singapore courts expounded on the interaction between insolvency and maritime law and important concepts under the UNCITRAL Model Law on Cross-Border Insolvency¹ (“Model Law”).

II. Bankruptcy

18.2 The decision in *Maybank Singapore Ltd v Elavarasan s/o Manoharan*² reaffirmed the court’s intolerance for dilatory tactics and abuses of process by debtors. Despite ongoing assessment for the Debt Repayment Scheme (“DRS”), the General Division of the High Court (“General Division”) exercised its discretion to make a bankruptcy order due to the debtor’s persistent delays and non-compliance in the DRS

1 United Nations Commission on International Trade Law, UNCITRAL Model Law on Cross-Border Insolvency (1997), as implemented in Singapore under s 252(1) and the Third Schedule to the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (“Model Law”).

2 [2025] 3 SLR 1726.

assessment process.³ The court held that its discretion could properly be invoked in two broad (but non-exhaustive) categories of cases:⁴

- (a) first, where the debtor's conduct in the bankruptcy proceedings and the DRS assessment amounts to an abuse of process; and
- (b) second, where the debtor acts in a manner prejudicial to the interest of his or her creditors.

18.3 The court added that its discretion should only be exercised in clear cases as a degree of deference ought to be given to the Official Assignee's ("OAs") assessment of whether an ongoing DRS assessment should continue.⁵ In this case, the court found that the DRS assessment process was extremely protracted, with the assessment still being at an early stage even though more than one year had passed; the debtor still had not submitted all the documents required by the OA to review the debtor's debt repayment plan and convene a meeting of creditors and there was no excuse for the debtor's delay.⁶ Further, the debtor's conduct was prejudicial to the interest of his creditors, in particular, his largest creditor, the claimant in the bankruptcy application, who had been kept out of funds and left without an effective remedy for almost two years, during which time the debtor was free to deal with his assets and incur new liabilities.⁷

18.4 In *DBS Bank Ltd v Li Yuan*,⁸ the General Division had to consider what constituted "sufficient reason" under s 315(1) of the IRDA for which the court could make an order staying the proceedings in a creditor's bankruptcy application. Particularly, the court considered whether a debtor's request for more time to repay the debt in respect of which the bankruptcy application was made constituted "sufficient reason".⁹ The court dismissed the debtor's application for a stay of the bankruptcy proceedings but granted an adjournment of the application.¹⁰

18.5 The court held that for "sufficient reason" to be shown and for the court's discretion to order a stay of bankruptcy proceedings to be enlivened, the circumstances which the debtor identified as grounds

3 *Maybank Singapore Ltd v Elavarasan s/o Manoharan* [2025] 3 SLR 1726 at [30]–[37].

4 *Maybank Singapore Ltd v Elavarasan s/o Manoharan* [2025] 3 SLR 1726 at [26].

5 *Maybank Singapore Ltd v Elavarasan s/o Manoharan* [2025] 3 SLR 1726 at [23] and [28].

6 *Maybank Singapore Ltd v Elavarasan s/o Manoharan* [2025] 3 SLR 1726 at [31]–[33].

7 *Maybank Singapore Ltd v Elavarasan s/o Manoharan* [2025] 3 SLR 1726 at [35]–[37].

8 [2025] 5 SLR 439.

9 *DBS Bank Ltd v Li Yuan* [2025] 5 SLR 439 at [15].

10 *DBS Bank Ltd v Li Yuan* [2025] 5 SLR 439 at [69]–[71].

for the stay had to have a reasonable prospect of either (a) putting into question the legal foundation of the bankruptcy application; or (b) resulting in the dismissal of the bankruptcy application.¹¹

18.6 Examples of such circumstances include, but are not limited to, situations where a putative debtor challenges his indebtedness to the creditor, or where the creditor holds adequate security for the underlying debt so there is an avenue, alternative to bankruptcy of the debtor, for the creditor's debt to be repaid.¹² Even where "sufficient reason" is shown, it does not automatically result in a stay.¹³ The debtor must go on to persuade the court that its discretion should be exercised in favour of a stay.¹⁴ In exercising that discretion, a principal consideration is whether there are sufficient safeguards for the creditor's pecuniary interests if a stay is to be ordered, and, where necessary, conditions will be imposed as part of the stay.¹⁵ A debtor's request for more time to repay the debt does not constitute "sufficient reason" as it reinforces the fact of the debtor's inability to repay the debt and confirms that the bankruptcy application has been brought with good grounds and is properly maintained.¹⁶

18.7 The General Division's decision in *Re Chen Weiwen Kelvin*¹⁷ addressed the standards for granting an interim order for voluntary arrangements under Pt 14 of the IRDA. The court emphasised that even where the preconditions under ss 276(1) and 279(1) of the IRDA for the grant of an interim order were satisfied, proposals must be detailed, credible, and likely to secure creditor support.¹⁸ The application was dismissed due to insufficient detail, lack of creditor support, and non-compliance with statutory requirements.¹⁹ The court also noted that the interim order lasted for 42 days by default and expressed the view that it was not persuaded that it had the power to order that the interim moratorium last for eight months, as sought by the debtor, in the absence of a specific provision in the IRDA to such effect.²⁰

11 *DBS Bank Ltd v Li Yuan* [2025] 5 SLR 439 at [41], [43] and [48]–[49].

12 *DBS Bank Ltd v Li Yuan* [2025] 5 SLR 439 at [22].

13 *DBS Bank Ltd v Li Yuan* [2025] 5 SLR 439 at [49].

14 *DBS Bank Ltd v Li Yuan* [2025] 5 SLR 439 at [49].

15 *DBS Bank Ltd v Li Yuan* [2025] 5 SLR 439 at [49].

16 *DBS Bank Ltd v Li Yuan* [2025] 5 SLR 439 at [37], [44] and [57]–[58].

17 [2025] 3 SLR 1740.

18 *Re Chen Weiwen Kelvin* [2025] 3 SLR 1740 at [16]–[17].

19 *Re Chen Weiwen Kelvin* [2025] 3 SLR 1740 at [28]–[41].

20 *Re Chen Weiwen Kelvin* [2025] 3 SLR 1740 at [45].

A. Expedited bankruptcy applications under section 314 of the Insolvency, Restructuring and Dissolution Act 2018

18.8 The General Division’s decision in *Java Asset Holding Ltd v Sin David*²¹ (“*Java Asset Holding*”) is the first reported judgment in Singapore on expedited bankruptcy applications under s 314 of the IRDA. The decision is significant because the mechanism for expedited bankruptcy applications was adapted from bankruptcy statutes from England and Hong Kong, but there have been no authorities from those jurisdictions on how the requirements should be applied.

18.9 Ordinarily, under s 312(a) of the IRDA, a debtor is presumed to be unable to pay his debts if, having been served with a statutory demand, he has for 21 days neither complied with it nor applied to set it aside. An expedited bankruptcy application is a mechanism under s 314 of the IRDA that allows a creditor to file a bankruptcy application before the usual 21-day statutory demand period has elapsed, if the creditor can show that there is a “serious possibility that the debtor’s property, or the value of all or any of the debtor’s property, will be significantly diminished”²² during that period.

18.10 The General Division explained that the timing of a bankruptcy application is significant, as an application triggers certain protective mechanisms to protect creditors. Apart from rendering void any post-application dispositions of the debtor’s property under s 328 of the IRDA, the court could also appoint interim receivers, or order a stay of enforcement or other proceedings against the debtor, pending the determination of the application. By permitting early filing of a bankruptcy application, these protective mechanisms could be activated sooner. This would reduce the risk of a debtor dissipating his assets during the 21-day window.

18.11 In this case, the petitioning creditor commenced a bankruptcy application only 16 days after serving a statutory demand. The court found that the creditor was entitled to do so on an expedited basis, as there was a serious possibility of the debtor’s property being significantly diminished within the usual 21-day window after the statutory demand. This was because the debtor had granted a power of attorney to one ESW Holdings Pte Ltd (“ESW”), authorising ESW to sell the debtor’s apartment to discharge debts owed to ESW. The sale was scheduled to be completed before the 21-day period in the statutory demand expired. Parties accepted that the sale of the apartment would significantly

21 [2025] 5 SLR 130.

22 Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) s 314(a).

diminish the debtor's property, with approximately \$5.1m of the sale proceeds earmarked for payment to repay existing debts owed to ESW.

18.12 The General Division's approach on when a debtor's property can be "significantly diminished" is notable.

18.13 It is observed that in the *Report of the Insolvency Law Review Committee*²³ in 2013, the committee recommended the introduction of the expedited bankruptcy mechanism to limit the debtor's ability to dispose of property or abscond. This was so that a creditor could take swift action against any fraudulent conveyance of property.²⁴

18.14 Yet, there is nothing in *Java Asset Holding* to suggest that the debtor's sale of his property to ESW was a fraudulent conveyance, or an attempt to dissipate his funds to frustrate creditors generally. Instead, the debtor appeared to have entered into that arrangement with ESW to compromise prior bankruptcy proceedings that ESW had commenced against the debtor. While completion of the sale would diminish the debtor's property, it would simultaneously extinguish what appeared to be a genuine debt owing to ESW. If so, the petitioning creditor's true concern would be that the transaction ran counter to *pari passu* principles, rather than a general diminution in the value of the debtor's property.

18.15 Yet, the transaction could also fall outside the scope of a preferential payment, if the transaction was only conceded to under significant commercial pressure from a genuine creditor, and the relevant defences were available. If so, it is submitted that a counterparty in ESW's position could have an arguable case to validate a post-application disposition under s 328 of the IRDA on such grounds. As this issue was not raised in *Java Asset Holding*, the court did not have the opportunity to decide if an expedited bankruptcy application could still be maintained, if the very transaction relied on for the expedited application was subsequently validated.

B. Adjudicating proofs of debt

18.16 In *Shim Wai Han v Lai Seng Kwoon*,²⁵ a creditor of a bankrupt director sought to reverse the private trustees' decision rejecting her proof of debt, which she filed against both the bankrupt and a company

23 Insolvency Law Review Committee, *Report of the Insolvency Law Review Committee: Final Report* (2013).

24 Insolvency Law Review Committee, *Report of the Insolvency Law Review Committee: Final Report* (2013) at paras 24–25.

25 [2025] 4 SLR 876.

in liquidation for claims in joint torts. The private trustees rejected the proof on the basis that:²⁶

- (a) the creditor's claims should have been made against the company in liquidation;
- (b) the claims were unsuitable for adjudication as they were factually complex; and
- (c) that the creditor should not obtain double recovery for what was, in substance, the same debt.

18.17 The General Division reviewed the decision in *Kyen Resources Pte Ltd v Feima International (Hongkong) Ltd*²⁷ and noted that the claims in that case were unsuitable for summary adjudication by a liquidator, as they were substantially disputed and factually complex. Here, the private trustees did not assert any substantive defence to the claims. If so, mere factual complexity would not be sufficient grounds for rejecting the proof of debt. The General Division also observed that even if there was some degree of factual complexity, summary adjudication would still be appropriate if the claim could be resolved through simple arithmetic.

18.18 The General Division also recognised that there should not, in principle, be double recovery for the same debt against the bankrupt and the company in liquidation. However, the General Division explained that concerns over double recovery did not affect the substantive validity of the creditor's claims. Instead, such concerns were related to the payment of dividends on the basis of such claims. If so, the concerns could be addressed by ensuring that such proofs of debt were updated at the time of payment of dividends. This was to account for any proofs in respect of the same debt, for which a dividend had already been paid from one estate.

C. Adjustments of contributions to bankrupt estate

18.19 *Re Goh Teh Lee*²⁸ concerned a bankrupt's application under s 86E(1) of the Bankruptcy Act²⁹ to lower the monthly contributions and targeted contributions that he had to pay, which had been set by the OA. In this case, the OA had already reduced the bankrupt's monthly contributions to \$100 a month, on account of the bankrupt's age and health. While the OA estimated that the bankrupt's net income was lower

26 *Shim Wai Han v Lai Seng Kwoon* [2025] 4 SLR 876 at [7].

27 [2024] 1 SLR 266.

28 [2025] 4 SLR 1462.

29 Cap 20, 2009 Rev Ed.

than his allowed deductibles, the OA had a standing policy that monthly contributions had to be no less than \$100.

18.20 The General Division affirmed that the standard of review in an application to review the OA's determination of contributions was the perversity standard. The question was whether the OA's decision was so absurd that no OA properly advised or properly instructing himself could have so acted.

18.21 The General Division was satisfied that the OA's decision to set monthly contributions at \$100 was perverse. The court first clarified that it was not in itself objectionable for the OA to have a standing policy that monthly contributions had to be no less than \$100. However, this was so long as the OA did not fetter its discretion by blindly applying its policy without regard to the possibility that a departure might be warranted in a particular case, and the application of the policy should not be perverse on the facts.

18.22 Here, the court noted that the OA would always impose the nominal monthly contribution of \$100, regardless of the bankrupt's circumstances. Such a blanket policy, which was devoid of exception, amounted to a fetter on the OA's discretion. Further, in setting the appropriate monthly contribution, the General Division disagreed that the assessment should be whether it was completely impossible for the bankrupt to find employment. Instead, the correct approach would be whether it was more likely than not that the bankrupt would be able to find employment, given his age and medical status.

III. Winding up

A. *Court's discretion on winding-up orders*

18.23 Claimants in winding-up applications often face debtors who do not dispute the debt owed, but who instead raise various grounds for deferring their winding up.

18.24 In *Maybank Singapore Ltd v Papa Bakerz Pte Ltd*,³⁰ the General Division reiterated the general rule that the court will grant a winding-up order when the procedural and substantive prerequisites for winding up are met. This is subject to the court's discretion under s 128(1) of the IRDA not to make the winding-up order if appropriate, having considered the facts and overall equities of the case.

30 [2025] 4 SLR 1373.

18.25 The court opined that there are three broad situations where adjournments would be sought. The first is where there is a prospect of repayment, or of the debtor and the creditor(s) agreeing on a payment plan. The second is where the debtor seeks to propose a restructuring plan. The third is where adjournments are sought to avoid the risk of conflicting decisions in cross-border insolvency proceedings.

18.26 The court then set out a non-exhaustive framework on whether to exercise its discretion to not make the winding-up order, if repayment was alleged to be forthcoming. The factors to be considered included:

- (a) the views of the general body of creditors;
- (b) the reasons offered by creditors for supporting or opposing the application;
- (c) whether the prospect of repayment was reasonable;
- (d) the viability of the company;
- (e) broader stakeholder interests, and
- (f) whether the adjournment was consistent with the court's case management policies.

18.27 These factors must be balanced against the benefits of early winding up, which include minimising the risk of asset dissipation, protecting the *pari passu* principle, and hastening the recirculation of the company's assets into the broader economy for economically productive redeployment.

18.28 Similarly, the General Division affirmed that a stay of the winding-up orders pending an appeal would be rarely granted and would require special circumstances, such as the order being patently wrong in law or fact.

18.29 On the facts, the General Division found that the debtor could not substantiate its assertion that it was able to pay off its debt with future sales. While the debtor's revenue did increase during certain seasons, the debtor's net financial position did not substantially improve due to increased costs of generating the additional revenue.

18.30 The decision provides a useful framework for the court's discretion to adjourn winding-up applications where repayment is said to be forthcoming, and reaffirms that indefinite postponement on the basis of unsubstantiated promises would undermine the balance of creditor and debtor rights.

IV. Winding up a sub-fund under a variable capital company

18.31 *Zhong Shan Strategic Fund v RG Strategy Fund VCC*³¹ is the first published judgment by the General Division on the winding up of a sub-fund under a variable capital company (“VCC”). Introduced to facilitate collective investment schemes, the VCC is a new type of corporate entity created under the Variable Capital Companies Act 2018³² (“VCC Act”).

18.32 A VCC’s sole object is to be one or more collective investment schemes in the form of a body corporate.³³ A VCC can be set up as a single standalone fund, or as an umbrella fund consisting of two or more sub-funds. Generally, the assets and liabilities of each sub-fund must be segregated, and the assets of one sub-fund cannot be used to discharge the liabilities of another. A sub-fund is not a separate legal entity from the umbrella VCC, but a sub-fund may be wound up separately from other sub-funds.

18.33 In *Zhong Shan Strategic Fund v RG Strategy Fund VCC*,³⁴ a shareholder of RG Asset-Backed Investment Fund I (“ABIFI”), a sub-fund under the umbrella VCC called RG Strategy Fund VCC, applied to wind up ABIFI. The court dismissed the application. Among other reasons, the applicant could not demonstrate that it was a creditor of ABIFI or that ABIFI was insolvent. In its judgment, the court made a number of important points which provide useful guidance.

18.34 First, an applicant must be clear as to whether it is applying to wind up the VCC or its sub-fund. Fundamentally, a sub-fund of an umbrella VCC is not a legal person separate from the VCC. A VCC may sue or be sued in respect of a sub-fund.³⁵ While a sub-fund of an umbrella VCC may be wound up “as if it were a legal person”,³⁶ the court stated that, if the application is to wind up a sub-fund, the correct procedure is for the winding-up application to be brought against the VCC as the named defendant, with the title and prayers of the application worded to make clear that the applicant seeks the winding up of the sub-fund.

18.35 The court then helpfully set out the statutory framework for the winding up of a sub-fund of a VCC. Part 10 of the Companies Act 2006³⁷

31 [2025] 5 SLR 322.

32 2020 Rev Ed.

33 Variable Capital Companies Act 2018 (2020 Rev Ed) s 15(1).

34 [2025] 5 SLR 322.

35 Variable Capital Companies Act 2018 (2020 Rev Ed) s 32(1).

36 Variable Capital Companies Act 2018 (2020 Rev Ed) s 33(1).

37 Cap 50, 2006 Rev Ed.

(as in force prior to its repeal on 30 July 2020) applied in relation to the winding up of a sub-fund of an umbrella VCC as it applied in relation to the winding up of a company limited by shares, subject to s 5 of the VCC Act and the modifications in the First Schedule to the Variable Capital Companies Act 2018.³⁸

18.36 Specifically, with regard to the grounds on which the court may wind up a sub-fund, para 14³⁹ of the First Schedule to the Variable Capital Companies Act 2018⁴⁰ replaced s 254(1) of the Companies Act.⁴¹ Paragraph 14 contained grounds substantially similar to those in s 254(1). For instance, para 14(d)⁴² referred to the umbrella VCC's inability to pay the debts of the sub-fund, and para 14(i)⁴³ referred to winding up on just and equitable grounds. Accordingly, principles set out in case law interpreting similar provisions in the Companies Act apply in the winding up of a sub-fund. An applicant has to show that it has the standing to make a winding-up application.⁴⁴ Where a debt is disputed in good faith and on substantial grounds, the insolvency court will typically dismiss the winding-up application because the claimant would usually be found to have failed to establish its standing as a creditor to bring the application and its grounds for the winding-up order.⁴⁵

18.37 On the facts, the court found that there was no debt due and owing by ABIFI to the applicant in respect of its requests to redeem its shares. Such redemption requests were subject to conditions under the governing documents and had not been effected because of a suspension which ABIFI was contractually entitled to impose. Accordingly, whilst the applicant had the standing to make the winding-up application as a contingent creditor (or alternatively as a contributory), the applicant failed to prove the umbrella VCC was “unable to pay the debts of the

38 Act 44 of 2018. With effect from 1 April 2026, the First Schedule to the Variable Capital Companies Act 2018 (Act 44 of 2018), *ie*, “Modification of Part X of Companies Act in Its Application to Winding Up of a Sub-fund of an Umbrella VCC” has been amended to “Modifications of Parts 8 and 9 of IRDA in Their Application to Winding Up of Sub-fund of Umbrella VCC” in the Variable Capital Companies Act 2018 (2020 Rev Ed).

39 Now para 18 of the First Schedule to the Variable Capital Companies Act 2018 (2020 Rev Ed).

40 Act 44 of 2018.

41 Cap 50, 2006 Rev Ed. Now s 125(1) of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed).

42 Now para 18(d) of the First Schedule to the Variable Capital Companies Act 2018 (2020 Rev Ed).

43 Now para 18(i) of the First Schedule to the Variable Capital Companies Act 2018 (2020 Rev Ed).

44 *Founder Group (Hong Kong) Ltd v Singapore JHC Co Pte Ltd* [2023] 2 SLR 554 at [24].

45 *Metalform Asia Pte Ltd v Holland Leedon Pte Ltd* [2007] 2 SLR(R) 268 at [62].

sub-fund⁴⁶. There was also no basis to wind up ABIFI on just and equitable grounds.

18.38 This being the first published decision on winding up a sub-fund under the VCC Act, the court made important points on the correct party to name as the defendant (*ie*, the VCC itself), as well as the grounds for winding up a VCC. On the latter, the principles set out in cases involving companies are likely to apply to VCCs, given the similarity in language in the relevant legislation for both VCCs and companies.

V. Expungement of previously admitted proof of debt

18.39 A liquidator who decided to reject a creditor's proof of debt may face a court application by that creditor for a reversal or variation of the decision. The Court of Appeal in *Yit Chee Wah v Inner Mongolia Huomei-Hongjun Aluminium Electricity Co, Ltd*⁴⁷ faced the less frequent scenario where a liquidator tried to expunge a proof of debt which was previously admitted, pursuant to r 133(1) of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020 ("CIR Rules").

18.40 In this case, the liquidator who had admitted the creditors' proofs of debt later discovered that the supporting documents submitted by the creditors were fraudulent and the proofs of debt were based on trades (and purported shipments) which had not taken place. The liquidator was aided by, among other things, a vessel-tracking website, "VesselFinder". The authority, reliability and weight to be placed on the evidence based on "VesselFinder" was heavily disputed. Reversing the decision of the court below,⁴⁸ the Court of Appeal agreed with the liquidator and expunged the proof of debt.

46 *Zhong Shan Strategic Fund v RG Strategy Fund VCC* [2025] 5 SLR 322 at [102]. See *Zhong Shan Strategic Fund v RG Strategy Fund VCC* [2025] 5 SLR 322 at [107]: The court had used the cash flow test enunciated in *Electric Power Pte Ltd v RCMA Asia Pte Ltd* [2021] 2 SLR 478, with the gloss being that:

[W]hen applying the cash flow test ... the 'current assets' to be considered are (a) the assets held by the umbrella VCC for the purpose of or that are attributable to the sub-fund concerned and (b) the assets (if any) held by the umbrella VCC generally for the purpose of its sub-funds or in order to enable the operation of its sub-funds, which are not attributable to any particular sub-fund and which the VCC considers fair to shareholders to allocate to the sub-fund concerned. The 'current liabilities' to be considered are the obverse of the 'current assets' to be considered.

47 [2025] 1 SLR 1110.

48 *Re Zhong Jun Resources (S) Pte Ltd* [2024] SGHC 160.

18.41 The Court of Appeal set out the test and burden of proof in deciding whether to expunge a proof of debt under r 133 of the CIR Rules. It is a two-stage test. At the first stage, the liquidator has to prove, on a *prima facie* standard, that the proof of debt sought to be expunged or reduced was improperly admitted. It follows from the language in r 133, *ie*, “[i]f a liquidator *thinks* that a proof has been improperly admitted ...”⁴⁹ [emphasis added] – that it generally suffices that the liquidator has a reasonable basis for his opinion that the proof was improperly admitted. It is incorrect to impose a higher burden on the liquidator to prove, on a balance of probabilities, that the proof was invalid in that the underlying debt is not maintainable.

18.42 A liquidator may prove that the proof of debt was *prima facie* improperly admitted by showing that a mistake has been made and if it had not been for that mistake, the proof would have been rejected.

18.43 The second stage of the test asks whether the court should expunge or reduce an improperly admitted proof of debt. Even when a liquidator thinks that a proof of debt has been improperly admitted, the court retains the discretion as to whether to expunge or reduce the proof. The Court of Appeal emphasised that, ultimately, it is the *creditor* who bears the onus of proving the validity of its debt.⁵⁰

18.44 The Court of Appeal was satisfied that the liquidator had a reasoned basis to take the position that a mistake was made when the proofs were admitted and that if he had known then what he subsequently discovered, the proofs would have been rejected. Proceeding to the second stage, the Court of Appeal held that, on the evidence, the creditors had failed to discharge their burden to show on the balance of probabilities that their proofs of debt reflected actual debts.

VI. Judicial management

18.45 The General Division in *Re USP Group Ltd*⁵¹ provided guidance on when judicial managers should seek court sanction under s 99(5) of the IRDA. The decision also underscored the importance of the judicial manager’s professional judgment in fulfilling their duties.

49 Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020.

50 This is consistent with reg 5 of the Insolvency, Restructuring and Dissolution (Court-Ordered Winding Up) Regulations 2020.

51 [2025] 4 SLR 1221.

18.46 The judicial managers of USP Group Ltd sought the court's sanction in relation to a proposed settlement agreement between USP Group Ltd and United Overseas Bank Ltd. The court held that where the direction sought under s 99(5) of the IRDA amounted to a court sanction for an intended act by the judicial manager, the following requirements had to be satisfied:⁵²

- (a) The judicial manager must have the power to carry out the act.
- (b) The judicial manager must honestly and reasonably believe the act would achieve one or more purposes of judicial management stated in s 89(1) of the IRDA.
- (c) The act must be in the interests of the company's creditors as a whole.
- (d) There must be a special reason or unusual circumstance justifying a court sanction, which must be something which materially tugs at the commercial or professional conscience of the judicial manager.

18.47 Applying the above test to the facts, the court found that the sanction ought to be granted. First, the judicial managers had the statutory power to enter into the proposed agreement.⁵³ Second, the agreement was not contrary to the wishes of the creditors, as there were no objections and a majority of creditors supported it.⁵⁴ Third, the judicial managers reasonably believed that the agreement was in the interests of the creditors and would help achieve the purposes of judicial management, particularly by protecting the group's key assets and enabling restructuring.⁵⁵ Fourth, special circumstances existed such that the proposed agreement would materially tug at the professional and commercial conscience of the judicial managers, namely, the urgency of pending winding-up proceedings, the history of litigation hampering the restructuring, and the significance of the assets involved.⁵⁶

52 *Re USP Group Ltd* [2025] 4 SLR 1221 at [14]–[18].

53 *Re USP Group Ltd* [2025] 4 SLR 1221 at [20]–[22].

54 *Re USP Group Ltd* [2025] 4 SLR 1221 at [23].

55 *Re USP Group Ltd* [2025] 4 SLR 1221 at [24]–[25].

56 *Re USP Group Ltd* [2025] 4 SLR 1221 at [26].

VII. Directors' duties and liabilities

18.48 In *Envy Asset Management Pte Ltd v Ng Yu Zhi*,⁵⁷ the plaintiff companies (“Envy Companies”)⁵⁸ and their respective liquidators brought claims against certain directors and employees of the companies for fraudulent trading, transactions at an undervalue, unfair preference, breach of directors’ duties, and dishonest assistance or knowing receipt, arising from their involvement in a Ponzi scheme orchestrated through the three companies.

18.49 The General Division had to distinguish between varying degrees of knowledge and culpability among directors and employees. In this regard:

(a) The second defendant, Lee Si Ye, held 10% to 20% of the shares in the Envy companies and was a director.⁵⁹ She was also responsible for back-office functions, including accounting and investor communications.⁶⁰ The court found that she was shockingly derelict in her duties as a director, failing to scrutinise obvious red flags and not conducting proper oversight.⁶¹ However, she was not found to have actual knowledge or wilful blindness regarding the Ponzi scheme’s fraudulent nature.⁶² She and her family invested in the scheme, and she was found to have been duped by Ng Yu Zhi, albeit through gross negligence.⁶³

(b) The third defendant, Ju Xiao, was a director and Head of Trading for a period.⁶⁴ The court found that he had explicit knowledge, or at least wilful blindness, of the fraudulent nature of the business.⁶⁵ He actively participated in forging documents and misrepresenting the company’s financial position, and was aware that the returns promised to investors were untenable.⁶⁶ He even warned others not to invest, knowing the scheme was fraudulent.⁶⁷

57 *Envy Asset Management Pte Ltd v Ng Yu Zhi* [2025] SGHC 143 (this case is partially reported in [2025] 5 SLR 87) (“*Ng Yu Zhi*”).

58 Namely, Envy Asset Management Pte Ltd, Envy Management Holdings Pte Ltd and Envy Global Trading Pte Ltd: see *Ng Yu Zhi* at [5].

59 *Ng Yu Zhi* at [19].

60 *Ng Yu Zhi* at [20].

61 *Ng Yu Zhi* at [94]–[120] and [128]–[130].

62 *Ng Yu Zhi* at [94]–[120], [128]–[130] and [181].

63 *Ng Yu Zhi* at [121]–[127].

64 *Ng Yu Zhi* at [21].

65 *Ng Yu Zhi* at [131]–[161] and [180].

66 *Ng Yu Zhi* at [131]–[161].

67 *Ng Yu Zhi* at [153].

(c) The fourth defendant, Cheong Ming Feng, was an administrative employee who assisted in the preparation and circulation of forged documents.⁶⁸ The court found that he knew he was creating forgeries but did not appreciate that these were being used to perpetuate a Ponzi scheme.⁶⁹ His actions were found to be the result of following instructions without understanding the broader fraudulent context.⁷⁰

18.50 Ng Yu Zhi, the principal architect of the Ponzi scheme, was adjudged bankrupt and was not a defendant in the proceedings, though his evidence was considered.⁷¹

18.51 In applying the above findings to the issue of liability under the various claims, the court held, *inter alia*, that:

(a) *Fraudulent trading*: Only the third defendant was found liable, as he had the requisite knowledge of the fraudulent scheme.⁷² The second and fourth defendants, while grossly negligent or complicit in certain acts, did not have actual knowledge of or were wilfully blind to the overall fraud.⁷³

(b) *Transactions to defraud creditors or transactions at an undervalue*: The court found that most payments to the defendants (commissions, profit sharing, bonuses, director's fees, dividends, and certain reimbursements) could be clawed back as they were made with the intent to defraud creditors or were transactions at an undervalue.⁷⁴ Basic salary payments were generally not clawed back except for the third defendant, who was not acting in good faith.⁷⁵

(c) *Unfair preferences*: The court found no subjective desire to prefer the defendants in the payment of basic salaries, so these were not set aside as unfair preferences.⁷⁶

(d) *Breach of directors' duties*: Both the second and third defendants were found to have breached their duties as

68 Ng Yu Zhi at [23]–[24].

69 Ng Yu Zhi at [166]–[179] and [181].

70 Ng Yu Zhi at [166]–[179].

71 Ng Yu Zhi at [3].

72 Ng Yu Zhi at [185]–[198].

73 Ng Yu Zhi at [185]–[198].

74 Ng Yu Zhi at [201]–[220], [225]–[238], [241]–[244] and [246]–[248].

75 Ng Yu Zhi at [221]–[224], [236], [238] and [245].

76 Ng Yu Zhi at [250]–[255].

directors.⁷⁷ The second defendant was grossly negligent, and the third defendant acted dishonestly.⁷⁸

(e) *Dishonest assistance and knowing receipt*: Only the third defendant was found liable for dishonest assistance and knowing receipt, as he had the necessary knowledge and intent which the second and fourth defendants did not have.⁷⁹

(f) *Unjust enrichment and unlawful means conspiracy*: The claims for unjust enrichment and unlawful means conspiracy failed against all defendants, as the necessary legal elements were not satisfied.⁸⁰

18.52 On damages and apportionment, the court adopted the “Minimum Net Principal” as the measure of loss, representing the aggregate under-withdrawn sums owed to investors.⁸¹ The second and third defendants were held jointly and severally liable for the Minimum Net Principal, with the third defendant’s liability capped at 40%.⁸² The fourth defendant was liable to return \$1,921,485.98, less basic salary and Central Provident Fund payments, reflecting the sums he received that could be clawed back.⁸³

18.53 The case reinforces the seriousness of directors’ duties and highlights the consequences of gross negligence and complicity even in the absence of actual knowledge of fraud.

VIII. Avoidance of transactions

18.54 Another dispute which arose from the Ponzi scheme perpetrated by the Envy group resulted in the decision in *CH Biovest Pte Ltd v Envy Asset Management Pte Ltd*.⁸⁴ Investors were led to believe that their funds placed with Envy Asset Management Pte Ltd (“EAM”) would generate profits from nickel trades. Such trades never existed. Following investigations by authorities, EAM collapsed and was placed in liquidation. The liquidators of EAM commenced legal proceedings against certain investors who had received profits from EAM, on the

77 Ng Yu Zhi at [263]–[274].

78 Ng Yu Zhi at [263]–[274].

79 Ng Yu Zhi at [282]–[288].

80 Ng Yu Zhi at [275]–[280].

81 Ng Yu Zhi at [295]–[296].

82 Ng Yu Zhi at [301] and [311].

83 Ng Yu Zhi at [314].

84 [2025] 1 SLR 141.

basis that such profits constituted transactions at an undervalue⁸⁵ or were related to transactions made with the intent to defraud creditors.⁸⁶

18.55 The General Division substantially allowed the liquidators' claims against the investors.⁸⁷ The Court of Appeal dismissed the appeal by one of the investors, CH Biovest Pte Ltd ("CH Biovest").

18.56 CH Biovest's primary argument on appeal⁸⁸ was that it had received profits from EAM pursuant to a contractual arrangement and EAM was merely performing its contractual obligations. As such, the payment of profits could not be a transaction at an undervalue (it may be an unfair preference, which was not the liquidators' case). Alternatively, CH Biovest claimed it had provided valuable consideration, which was a defence against a claim under s 73B of the Conveyancing and Law of Property Act⁸⁹ ("CLPA 1994").

18.57 The Court of Appeal disagreed with CH Biovest. In essence, the Court of Appeal held that the liquidators had established their claims under s 224 of the Insolvency, Restructuring and Dissolution Act 2018,⁹⁰ and s 73B of the CLPA 1994. The purported profits were to be based on nickel trades. However, no such trades existed, no profits were made and nothing was due to the investors. The payment of profits to investors, including the appellant, cannot be said to have been made under any contractual arrangement. This is different from the case in *Fairfield Sentry Ltd v Migani*,⁹¹ where the company contractually agreed to pay creditors based on its own certifications. The fact that such certifications were based on reports provided by a third party later found to be fictitious did not absolve the company from its contractual obligations.

18.58 The Court of Appeal helpfully added that not all transactions involving Ponzi schemes would be subject to avoidance. The court gave an example of a legitimate loan from a bank to a Ponzi operator to finance a lease. The bank was not investing in the Ponzi scheme itself, and the repayment of the loan should not be seen in the same light as the operator's payments to its investors under the Ponzi scheme.

85 Insolvency, Restructuring and Dissolution Act 2018 (Act 40 of 2018) s 224.

86 Conveyancing and Law of Property Act (Cap 61, 1994 Rev Ed) s 73B, now s 438 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed), read with s 439 of the Act.

87 *Envy Asset Management Pte Ltd v CH Biovest Pte Ltd* [2024] SGHC 46.

88 Relying on the Privy Council's decision in *Fairfield Sentry Ltd v Migani* [2014] UKPC 9.

89 Cap 61, 1994 Rev Ed.

90 Act 40 of 2018.

91 [2014] UKPC 9.

18.59 Having decided that EAM’s payment of profits to investors did not fall within any contractual arrangement and was made for no consideration, the court had no difficulty concluding that the profits should be returned under s 224 of the Insolvency, Restructuring and Dissolution Act 2018⁹² because they were gifts and had been paid when EAM was insolvent. An alternative ground for the return of profits was s 73B of the CLPA 1994, as CH Biovest failed to establish that it received the profits for valuable consideration and in good faith.

18.60 The year saw another decision from the Court of Appeal on transactions at an undervalue – *Affert Resources Pte Ltd v Industries Chimiques du Senegal*.⁹³ Affert Resources Pte Ltd (“Affert”), the company in liquidation, had waived its claim for a debt owed by another company. A key issue was whether such waiver should be set aside as a transaction at an undervalue under s 98(1) of the Bankruptcy Act⁹⁴ read with s 329 of the Companies Act 2006.⁹⁵ The waiver was not made in isolation. It was part of an arrangement amongst companies in a group which arose from a sale of shares in one of the companies. The liquidators of Affert sought the restoration of the debt that was waived and claimed for payment of the debt.

18.61 In deciding whether a transaction was at an undervalue, the first step is identifying the transaction in question. The Court of Appeal reasoned that the waiver was not the transaction. Instead, the transaction was “the arrangement that was in place to facilitate”⁹⁶ the sale of shares.

18.62 The term “transaction” is defined widely as “[including] any gift, agreement or arrangement, and any reference to entering into a transaction shall be construed accordingly”.⁹⁷ The term “transaction” should therefore be given an expansive definition. The Court of Appeal explained that doing so cohered with the objective of the avoidance provision, which was to “revisit any disposition of assets that [was]

92 Act 40 of 2018.

93 [2025] 1 SLR 649.

94 Cap 20, 2009 Rev Ed.

95 Cap 50, 2006 Rev Ed.

96 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [46].

97 Bankruptcy Act (Cap 20, 2009 Rev Ed) s 2.

tainted by an inadequacy of consideration to ensure the Preservation and Distribution Rationales⁹⁸ [were] upheld”⁹⁹

18.63 After identifying the transaction, the Court of Appeal proceeded to analyse whether it was at an undervalue. This entailed looking at the consideration flowing from and to the grantor (*ie*, the company in liquidation). In that respect, the court considered the totality of the arrangement and the benefits and detriment to the relevant parties to the arrangement. On the consideration given by Affert, the value was not the face value of the debt waived but should be based on the likelihood of recovering the debt. The Court of Appeal found that the likelihood of recovery was low as the debtor was insolvent. On the other hand, with respect to the value of the consideration received by Affert, there was evidence that the sale of shares and the payments thereunder between other parties provided benefit to Affert. Accordingly, it could not be said that Affert received no consideration. The liquidators of Affert bore the burden of demonstrating that the value Affert received was significantly less, in money or money’s worth, than the value given in waiving the debt. On the facts, the liquidators could not do so.

18.64 The Court of Appeal also expounded on the relief of a restorative order if a transaction had to be unwound. In the court’s view, a restorative order must return parties to the position that they would have been in if the transaction had not been entered into, and:¹⁰⁰

[i]n doing so, the court must not reconstruct the steps that a company might have taken, must not put the company in a better position than it would have been in if the transaction had not occurred, and must account for any enhancement in value of the property to be restored as a result of the respondent’s actions.

IX. Removal of liquidators and judicial managers

18.65 In *Tay Lak Khoon v Tan Wei Cheong*,¹⁰¹ the Court of Appeal undertook a significant reformulation of the test for removing liquidators and judicial managers.

98 See *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [1]:

The preservation of assets of the estate in an insolvent liquidation has been described as the ‘Preservation Rationale.’ It is also vital to reconstitute the estate for the purpose of distribution of the assets to the creditors. This has been described as the ‘Distribution Rationale.’

99 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [47].

100 *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 at [108].

101 [2025] 2 SLR 118.

18.66 The court overruled the two-stage test previously articulated in *DB International Trust (Singapore) Ltd v Medora Xerxes Jamshid*,¹⁰² which required (a) an assessment of the purposes for which a liquidator was appointed; and (b) an assessment of whether the removal was in the “real, substantial and honest interest” of the liquidation.¹⁰³

18.67 The Court of Appeal held that the first stage of that test was unnecessary, and should be subsumed within the second stage. This was because the purposes for which a liquidator was appointed necessarily formed the context for assessing whether removal was in the real and substantial interest of the liquidation. The court held that the word “honest” added nothing meaningful to the inquiry, and was not a necessary element of the test.¹⁰⁴ The court also disagreed with the suggestion in *DB International Trust (Singapore) Ltd v Medora Xerxes Jamshid*¹⁰⁵ that the court retained a residual discretion to remove a liquidator after due cause had been shown. The court reasoned that it was difficult to see in what circumstances it would decline to remove a liquidator, if it had already concluded that such removal was in the best interest of the liquidation.

18.68 Accordingly, the single overarching question under ss 139(1) and 104(1)(a) of the IRDA is whether the removal of a court-appointed liquidator or judicial manager is in the real and substantial interest of the liquidation or judicial management.

18.69 It is observed that the reformulated test is largely clarificatory, and that its application is unlikely to result in different outcomes, save that it will no longer be possible for a liquidator to continue in his appointment if there is already due cause to remove him. On the facts, the Court of Appeal found that there was no due cause to remove the judicial managers. One of the major allegations was that the judicial managers acted in an unfairly prejudicial manner to creditors, by taking into account votes of entities said to be related to the debtor for the judicial managers’ statement of proposals. The Court of Appeal accepted that the judicial managers had relied on legal advice when doing so, and that it was reasonable to have done so in the circumstances. Although the correctness of the judicial managers’ treatment of related-party votes for a statement of proposals was not in issue in the appeal, the Court of Appeal provisionally observed in *obiter dicta* that the considerations

102 [2023] 5 SLR 773.

103 *Tay Lak Khoon v Tan Wei Cheong* [2025] 2 SLR 118 at [26], citing *DB International Trust (Singapore) Ltd v Medora Xerxes Jamshid* [2023] 5 SLR 773 at [13].

104 *Tay Lak Khoon v Tan Wei Cheong* [2025] 2 SLR 118 at [33].

105 [2023] 5 SLR 773.

driving the disregarding of related-party votes in schemes of arrangement may not apply here, as a statement of proposals did not require any adjustment of creditor rights. Further, regs 38 and 39 of the Insolvency, Restructuring and Dissolution (Judicial Management) Regulations 2020 expressly restrict certain creditors from voting to approve a statement of proposals, and related party creditors are not expressly restricted. This suggests that the votes of related creditors should be regarded.

X. Interaction between insolvency and maritime laws

18.70 The Court of Appeal's decision in *Natixis, Singapore branch v Seshadri Rajagopalan*¹⁰⁶ is an important addition to the *corpus* of Singapore case law examining the interaction between insolvency law and maritime law. Issues and disputes not infrequently arise on how a claimant's right under maritime law against a vessel is affected by an insolvency process such as liquidation or judicial management.¹⁰⁷ One specific aspect is whether such a maritime claim should be given effect notwithstanding the insolvency process or be subject to similar prohibitions or restrictions applicable to other creditors under insolvency law. In this case, the appellant banks had obtained *in rem* writs against a vessel owned by a company in judicial management. The vessel was subsequently arrested by its mortgagee and sold by way of a judicial sale by a foreign court. Before the judicial sale, the judicial manager had entered into a sale agreement with a buyer of the vessel. The agreement provided that the vessel would be sold free of encumbrances through a judicial sale.

18.71 The appellants claimed that the judicial managers breached s 100(2) of the IRDA – which requires a judicial manager to obtain court approval for a disposal of property subject to a security. No such approval was obtained. The key plank of the appellants' case was that they had a security interest over the vessel and there was a "disposal" of such "security" by the judicial manager.¹⁰⁸

18.72 The court disagreed with the appellants. First, there was no disposal by the judicial managers. The disposal was not the judicial managers' entry into the sale agreement for the vessel but was the judicial

106 [2025] 1 SLR 1020.

107 Justice Steven Chong, Supreme Court of Singapore, "When Worlds Collide: The Interaction Between Insolvency and Maritime Law", keynote address at the 2nd Meeting of the Judicial Insolvency Network (22 September 2018) <<https://isomer-user-content.by.gov.sg/132/8a9405a7-5320-48f4-8600-097b07082477/2018-sept-jin-keynote-address-new-york.pdf>> (accessed 10 June 2026).

108 *Natixis, Singapore branch v Seshadri Rajagopalan* [2025] 1 SLR 1020 at [26]–[27].

sale by the foreign court. Moreover, the mortgagee's arrest and judicial sale of the vessel should be regarded as an enforcement of its security interest, not a disposal by the judicial managers. It is, in any event, doubtful that s 100(2) of the IRDA has extraterritorial effect.

18.73 Second, the appellants did not have a security over the vessel. In the court's view, the statutory lien is not a security interest but an antecedent right to obtain security which is enforceable by arrest. It is thus only upon arrest that the claimant can properly be said to hold a security interest in the vessel. The court added that the kind of security Parliament had in mind for s 100(2) of the IRDA is consensual in nature (such as a charge), as opposed to admiralty *in rem* claims.

18.74 On the premise that the judicial managers should have obtained approval, the appellants alleged that his conduct engaged the principle in *Ex parte James; In re Condon*¹⁰⁹ ("*Ex parte James*"). The principle in *Ex parte James* allows the court to intervene to restrain its officers from acting in a way which, although lawful and in accordance with enforceable rights, does not accord with what a right-thinking person would regard as appropriate conduct for an officer of the court. The appellants' argument based on *Ex parte James* naturally fell away given the court's decision that the judicial manager did not breach s 100(2) of the IRDA. Nonetheless, the Court of Appeal took the opportunity to provide guidance on the principle in *Ex parte James*. The principle has traditionally been held to apply only to court-appointed insolvency office-holders. While not deciding on the point, the court noted recent authorities holding that there was no reason why the principle should not apply to a voluntary liquidation process. With regard to the threshold for invoking the principle, the court remarked that its applicability is not premised on an officer of the court acting in a subjectively dishonest manner or acting with conscious impropriety. Instead, the officer's conduct is measured against an objective standard. In any case, the judicial managers' conduct in this case did not warrant the court's intervention, whether based on the principle in *Ex parte James* or s 115 of the IRDA.

XI. Cross-border insolvency

18.75 The Singapore courts continue to see a steady stream of recognition applications under the Model Law. These include *Re King & Wood Mallesons*,¹¹⁰ the first reported General Division decision on an

109 (1874) LR 9 Ch App 609.

110 [2025] 3 SLR 1754.

application for recognition of an insolvency proceeding¹¹¹ commenced in the People's Republic of China and *Re Compuage Infocom Ltd*,¹¹² the first reported General Division decision on an application to recognise an insolvency proceeding¹¹³ commenced in India. There were also applications to recognise proceedings under Chapter 11 ("US Chapter 11") of the United States Bankruptcy Code¹¹⁴ and plans in *Re Terraform Labs Pte Ltd*,¹¹⁵ *Re Quoine Pte Ltd*¹¹⁶ and *Re Drivetrain LLC*.¹¹⁷ In these cases, the court was satisfied that the requirements for recognition were met and granted the applications. Certain noteworthy points from the decisions are highlighted below.

18.76 A last-minute and ill-fated attempt by certain creditors in *Re Terraform Labs Pte Ltd*¹¹⁸ to adjourn the hearing of the application gave the Singapore International Commercial Court ("SICC") the opportunity to point out a procedural issue. The Singapore International Commercial Court Rules 2021 did not prescribe a notice period for requests to adjourn the hearing of an application. Although para 102 of the Singapore International Commercial Court Practice Directions stated that a request should be made at least 14 calendar days before the hearing, the SICC PDs did not apply to proceedings governed by the SICC Rules. This meant an adjournment could be requested at any time. Nonetheless, the court remarked that presumably such a request had to be for good cause and used sparingly only in those situations where the need for a delay was clearly justified and could not have been anticipated earlier.

18.77 *Re Quoine Pte Ltd*¹¹⁹ dealt with a rather unusual instance where the debtor must obtain recognition of the US Chapter 11 plan from the SICC by a stipulated deadline, failing which the debtor, Quoine Pte Ltd, and its creditors could suffer the material adverse consequence of being excluded from and deprived of the right to receive larger distributions from the estates of the entities in the US Chapter 11 proceedings.

111 In that case, it was a consolidated reorganisation proceeding of a group of companies.

112 [2025] 3 SLR 1459.

113 In that case, it was a corporate insolvency resolution process commenced in the National Company Law Tribunal, Mumbai Bench under the Insolvency and Bankruptcy Code, 2016 (Act 31 of 2016) (India).

114 11 USC (US) (1978).

115 [2025] 3 SLR 1516.

116 [2025] 3 SLR 1536.

117 [2026] 3 SLR 403.

118 [2025] 3 SLR 1516.

119 [2025] 3 SLR 1536.

18.78 In considering the relief to be granted, the SICC noted that although the expression “appropriate relief” in Art 21(1) of the Model Law should be interpreted broadly,¹²⁰ it is not a limitless concept and must be “grounded in showings that fit the needs of each case”.¹²¹ Other than the need for the SICC to recognise the US Chapter 11 plan by a certain deadline, the SICC decided it was not necessary to recognise certain US court orders, including those relating to cash management and the administration of the US Chapter 11 case, particularly since the Chapter 11 plan had already been confirmed and gone into effect.

18.79 The issue of relief was also addressed in *Re Compuage Infocom Ltd*,¹²² where the General Division, in granting the recognition application, declined to order a repatriation of assets from Singapore to India at that stage of the proceeding. In the court’s view, the Singapore-based creditors should be given notice and an opportunity to voice their objections, via a hearing, on any proposed repatriation of assets. This aim to preserve the interests of local creditors was demonstrated in s 250(3)(c)(i) of the IRDA.¹²³ As the court observed, if it was shown that local creditors would be treated fairly and given ample opportunity to participate in the process in the foreign proceeding, there would rarely be any reason to refuse repatriation of assets out of Singapore.

18.80 On a separate note, the General Division in *Re Drivetrain LLC*¹²⁴ raised important points on due process. The court stated that the existing directors of the debtor company in Singapore must be notified of the recognition application. Although a recognition application may be commenced *ex parte*, it should be brought to the attention of all interested parties, who would thereby be given an opportunity to address the court on matters of concern. This is supported by Art 22(1) of the Model Law which provides that, in granting relief under Art 21, the court must be satisfied that the interests of the creditors and other interested persons are adequately protected. In the present case, the existing directors of the debtor company in Singapore would be interested parties, given that the US Chapter 11 plan provided for the termination of the directors of the debtor company, and conferred powers on the foreign representative to act as its directors.

120 *Re Terraform Labs Pte Ltd* [2025] 3 SLR 1516 at [81].

121 *Re Quoine Pte Ltd* [2025] 3 SLR 1536 at [22].

122 [2025] 3 SLR 1459.

123 In essence, this provides that assets of a “relevant company” – primarily licenced entities such as banks and insurance companies – must be used to pay debts incurred in Singapore before remittance to a foreign liquidator for the company.

124 [2026] 3 SLR 403.

18.81 The court added that, for a recognition application, it would be good practice for an applicant to clearly explain to the court (subject to any legal professional privilege which may apply) why it filed the application, why the orders being sought were necessary or appropriate, and what its intended course of action would be if the application was granted. This makes good sense. As the court explained, recognition may be refused on public policy grounds.¹²⁵ It would hence be necessary for the court to first understand the applicant's purpose in filing the recognition application in order to meaningfully determine whether the public policy exception applies.

18.82 Moving on to decisions from the Court of Appeal, *Re Fullerton Capital Ltd*¹²⁶ addressed the standard of proof on the presumption of the centre of main interests ("COMI").

18.83 The Court of Appeal stated that it is necessary to distinguish between the question of whether a foreign proceeding was taking place at the debtor's COMI and the question of where the debtor's COMI was. The foreign representative seeking recognition bears the burden to prove whether a foreign proceeding was taking place at the debtor's COMI. On the second question, the debtor's COMI is presumed to be at its registered office unless there was "proof to the contrary".¹²⁷ It follows that the party who claims that the debtor's COMI was at a place other than the registered office bears the burden of establishing "proof to the contrary". Such party has to do more than merely downplay or disprove the connection between the debtor and its registered office. It must put forward a positive case for how and why, on a balance of probabilities, another jurisdiction had a stronger connection with the debtor. In the instant case, the appellant failed to discharge the burden of rebutting the presumption of the debtor's COMI being the location of its registered office.

18.84 The Court of Appeal also dealt with the question of the relevant time for determining a debtor's COMI and the factors to be considered. The relevant date for assessing the COMI is the date of the recognition application (as opposed to, *eg*, the date of the commencement of the foreign insolvency proceeding). The courts consider a range of factors in determining a debtor's COMI, such as the debtor's business operations and where management decisions were made. After the debtor commences a foreign insolvency proceeding and a foreign insolvency office holder (or foreign representative) is appointed, he or she may take steps which

125 See Art 6 of the Model Law.

126 [2025] 1 SLR 432.

127 Model Law Art 16(3).

affect the COMI, including shifting the operations or management. The issue is whether a recognising court should or can take such acts into account in assessing the COMI. The decision in *Re Fullerton Capital Ltd*¹²⁸ makes it clear¹²⁹ that the court is permitted to take into account the actions of a foreign representative since the commencement of the foreign proceeding in the analysis of the debtor's COMI.

18.85 With regard to the public policy exception to recognition,¹³⁰ the Court of Appeal held that “bad faith and material non-disclosure by a foreign representative were matters properly within the scope of the public policy exception.”¹³¹ This provides helpful elucidation on the contours of such exception, the list of which is not closed.

18.86 In *Sapura Fabrication Sdn Bhd v GAS*,¹³² the Court of Appeal considered the interaction between arbitration and a debt restructuring regime. The key facts are straightforward. Certain Sapura entities (*ie*, Sapura Fabrication Sdn Bhd and Sapura Offshore Sdn Bhd) obtained recognition of a scheme of arrangement process in Malaysia as a foreign main proceeding under the Model Law. GAS had commenced an arbitration against the Sapura entities and sought a carve-out from the moratorium granted under the Model Law to allow such arbitration to proceed.

18.87 In granting the carve-out, the General Division had considered the following factors:

- (a) the timing of the application for the carve-out;
- (b) the nature of the claim in the arbitration;
- (c) the existing remedies;
- (d) the merits of the claim in the arbitration;
- (e) the existence of prejudice to the creditors or to the orderly administration of the insolvency proceeding to be recognised; and
- (f) other miscellaneous factors such as the potential of an avalanche of litigation being unleashed by the grant of permission, the proportionality of the cost of the proceeding to the debtor's resources, and the views of the majority creditors.

128 [2025] 1 SLR 432.

129 Affirming the court's earlier views in *British Steamship Protection and Indemnity Association Ltd v Thresh, Charles* [2024] 2 SLR 317.

130 Model Law Art 6.

131 *Re Fullerton Capital Ltd* [2025] 1 SLR 432 at [123].

132 [2025] 1 SLR 492.

18.88 These factors were set out in *Wang Aifeng v Sunmax Global Capital Fund 1 Pte Ltd*.¹³³

18.89 In its judgment, the General Division remarked that it would have granted the carve-out because of the court's mandatory obligation – which stemmed from *AnAn Group (Singapore) Pte Ltd v VTB Bank*¹³⁴ (“AnAn Group”) – to enforce the arbitration agreements.

18.90 The Court of Appeal concluded that it would have dismissed Sapura's appeals had they not been withdrawn and concluded that the carve-out for GAS should be granted. However, the Court of Appeal disagreed that it would have been mandatory to grant a carve-out to enforce the arbitration agreement. The Court of Appeal explained that *AnAn Group* did not stand for the proposition that the policy of enforcing arbitration agreements should trump the insolvency regime under all circumstances. *AnAn Group* fell within the type of cases where the issue was whether to stay or dismiss a winding-up application if the dispute giving rise to the application could be subject to an arbitration agreement. In such cases, the policy concerns of the insolvency regime were not strictly engaged because the company was not yet determined to be a debtor at the time that the winding-up application based on the disputed debt was brought. On the other hand, the policy concerns of the insolvency regime were strictly engaged in the present case where the Sapura entities were trying to restructure their debts in a scheme of arrangement.

18.91 Moreover, the concern of a creditor trying to use a winding-up application to bypass an arbitration agreement did not arise in the present case, when it was the creditor (*ie*, GAS) that was trying to assert its right to arbitrate by seeking a carve-out from the moratorium. Ultimately, allowing a creditor to arbitrate a prior private *inter se* dispute against the insolvent company did not necessarily undermine the underlying policy aims of the insolvency regime.

18.92 The Court of Appeal concluded that it was correct for the General Division to refer to the *Wang Aifeng v Sunmax Global Capital Fund 1 Pte*

133 [2023] 3 SLR 1604.

134 [2020] 1 SLR 1158. When a court is faced with either a disputed debt or a cross-claim that is subject to a putative arbitration agreement, the *prima facie* standard should apply, such that the winding-up proceedings will be stayed or dismissed as long as (a) there is a valid arbitration agreement between the parties; and (b) the dispute falls within the scope of the arbitration agreement, provided that the dispute is not being raised by the debtor in abuse of the court's process.

*Ltd*¹³⁵ factors in exercising its discretion to decide whether to allow the carve-out, and saw no reason to disturb the General Division's decision.
