WONG PARTNERSHIP

LAWWATCH

NOVEMBER 2019

In Brief

DEALS

WONGPARTNERSHIP LLP ACTS IN…
Combination of Ascott Reit and Ascendas Hospitality Trust

WongPartnership acted for Ascendas Hospitality Fund Management Pte. Ltd. (as manager of Ascendas Hospitality Real Estate Investment Trust) and Ascendas Hospitality Trust Management Pte. Ltd. (as trustee-manager of Ascendas Hospitality Business Trust) (collectively, "**A-HTRUST Managers**"), in the proposed combination of Ascendas Hospitality Trust ("**A-HTRUST**") with Ascott Residence Trust ("**Ascott Reit**") by way of a trust scheme of arrangement ("**Combination**").

The Combination is to be effected through the acquisition by Ascott Reit of all issued and paid-up stapled units of A-HTRUST for a consideration of S$1.0868 for each A-HTRUST stapled unit, comprising S$0.0543 in cash and 0.7942 units in stapled Ascott Reit and Ascott Business Trust.

The Combination would be the first trust combination in Singapore involving an active business trust.

The combined entity will be the seventh largest trust listed on the Singapore Exchange by asset value, and is expected to become the largest hospitality trust in Asia Pacific. The Combination will also facilitate the inclusion of Ascott Reit into the FTSE EPRA Nareit Developed Index.

Partners involved in the transaction are Ng Wai King, Andrew Ang, Audrey Chng and Lydia Ong from the Corporate/Mergers & Acquisitions Practice, Chan Jia Hui from the Competition & Regulatory Practice and the Financial Services Regulatory Practice, Monica Yip and Jerry Tan from the Corporate Real Estate Practice, Trevor Chuan from the Debt Capital Markets Practice, and Linda Low from the Energy, Projects & Construction Practice.

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Other recent matters that WongPartnership was involved in were:

DESCRIPTION	TYPE
Acted in Samsung Ventures' investment in the Series A funding round for Swingvy which raised US$7 million. The funding round is Samsung Ventures' first investment in South East Asia and included other investors – Aviva Ventures, Bass Investments, Walden International, and Big Basin Capital.	Corporate/Mergers & Acquisitions / Competition & Regulatory / Intellectual Property, Media & Technology
Acting in a voluntary conditional cash offer by 8S Capital Holdings Pte. Ltd. ("**Offeror**") for all the issued and paid-up ordinary shares of 800 Super Holdings Limited and in the debt and equity financing by KKR to the Offeror.	Corporate/Mergers & Acquisitions / Capital Markets / Competition & Regulatory / Corporate Real Estate
Acting in the proposed disposal of CapitaMall Xuefu, CapitaMall Aidemengdun and CapitaMall Yuhuating by CapitaLand Limited to CapitaLand Retail China Trust Management Limited for 2.96 billion yuan (S$589.2 million).	Corporate/Mergers & Acquisitions
Acted in Jet Tech Ventures Pte. Ltd.'s ("**Jet Tech**") investment in Easy Touch Pte. Ltd. / PouchNATION by way of subscription of Series B convertible preference shares. Jet Tech is the wholly-owned subsidiary of the Traveloka group of companies.	Corporate/Mergers & Acquisitions / Financial Services Regulation / Intellectual Property, Media & Technology

PRIVATE BANKING

In Singapore's Largest Private Banking Claim To Date, Singapore High Court Dismissed Claims for Negligence and Breach of Alleged Implied Term

The Singapore High Court has, in Singapore's largest private banking claim to date, dismissed claims against a bank for, among other things, negligent advice in respect of private banking accounts and breach of an alleged implied term to provide collateral value, total exposure and mark-to-market value for the accounts on a daily basis: *Zillion Global Ltd and another v Deutsche Bank AG, Singapore Branch* [2019] SGHC 165.

Our Comments

In this case, the High Court examined the circumstances where a duty of care can arise through the conduct of employees of a financial institution. The High Court opined that where there is regular contact between the employees of the financial institution and the customer, and where advice and recommendations on transactions were provided, the financial institution may be found to have voluntarily assumed responsibility to take care when providing advice to the customer, even when it was the customer (and not the financial institution) who could decide on what transactions to enter into under the account. However, the extent of such duty would depend on the facts of each case; a duty to take care when providing advice to the customer need not extend to "managing" the account on behalf of the customer, or informing the customer that further trades might cause the customer to be, or to risk being, under-collaterised *vis-à-vis* the financial institution.

Moreover, to succeed in its claim, the customer must demonstrate that his losses (if any) were caused by the financial institution's breaches of its duty. The fact of a difference between the value of assets injected into the accounts and the net value of the assets in the accounts after transactions were closed out, is not sufficient to prove that such difference was caused by the financial institution's breaches of its duty.

It is also noteworthy that the High Court in this instance had proceeded on the assumption that there was no disclaimer or qualification of responsibility in the relevant contracts, while recognising that express disclaimers can prevent a duty of care from arising in tort.

The express terms of the relevant contractual documents as to the information to be provided by the financial institution to the customer are relevant considerations as to whether a term should be implied for the financial institution to provide further information including outstanding notional values, collateral value, total exposure, mark-to-market value and notional value to the customer.

Alvin Yeo Khirn Hai SC, Sim Bock Eng, Aw Wen Ni, Tan Kia Hua and Vincent Ho Wei Jie of WongPartnership acted for the successful defendant bank.

This update takes a look at the Court's decision.

Background

The key facts relevant to the issues discussed in this update are summarised below.

The plaintiffs ("**Plaintiffs**") were two companies, Zillion Global Limited and Fields Pacific Limited, beneficially owned by one Mr Pan Fang-Jen ("**Pan**"). The defendant was Deutsche Bank AG, Singapore Branch ("**Bank**"). The Plaintiffs opened (among other accounts) two advisory accounts and a foreign exchange margin trading account ("**Accounts**") with the Bank's Private Wealth Management ("**PWM**") division in 2006 and 2007. It was Pan (and not the Bank) who could decide on what transactions to enter into under the Accounts.

Before the Accounts were opened, Pan also had private banking accounts with other banks (in his name or names of companies of which he was the beneficial owner) with whom he invested substantial sums.

As part of its PWM services, the Bank introduced financial products to Pan and/or the Plaintiffs from time to time. It also conducted meetings with Pan and regular telephone discussions with Pan and/or his representatives.

In August 2008, collateral shortfall problems surfaced in the Accounts, which led to the Bank issuing margin call letters requesting that immediate steps be taken to restore the shortfalls, either by the provision of additional security or the reduction of the total exposure.

When the shortfalls were not restored by 13 October 2008, the Bank closed out certain positions under the Accounts on that date.

On 3 July 2014, the Plaintiffs commenced an action against the Bank for, among other things, negligence and breach of an alleged implied term of the relevant contractual documents governing the Accounts ("**Contracts**").

The High Court's Decision

The Court found in favour of the Bank, holding that the Plaintiffs failed to establish liability under their claim for negligence, and that there was no implied contractual obligation for the Bank to provide information such as outstanding notional values, collateral value, total exposure, mark-to-market value and notional value which the Plaintiffs claimed were necessary for them to monitor their collateral situation.

Claim for negligence

The Court found that the Bank owed the Plaintiffs a duty of care in tort when giving them advice on wealth management in relation to the Accounts. However, it also found that the Bank did not breach this duty of care, and that the Plaintiffs had failed to establish how each alleged instance of breach caused them to suffer loss. Indeed, the Plaintiffs did not assert that they would not have entered into the transactions but for the Bank's alleged negligence. The Plaintiffs' claim for negligence therefore failed.

In finding that the Bank owed a duty of care in giving advice, the Court, applying the test in *Spandeck Engineering (S) Pte Ltd v Defence Science & Technology Agency* [2007] 4 SLR(R) 100, held that:

- There were regular telephone discussions and meetings between the Bank's representatives and the Plaintiffs and that the Bank gave advice and made recommendations to the Plaintiffs on transactions under the Accounts. As a result, the Court accepted that there was an advisory relationship between the Bank and the Plaintiffs beyond the normal role of a salesperson in the private banking context introducing products.

- Pan considered the Bank's advice and recommendations, even though he did not always agree with the Bank. The Court also found that Pan's reliance on the Bank was reasonable as the Bank provided him advice through a team of experts/product specialists in various types of investments. The Court therefore found that the Bank had voluntarily assumed the responsibility to advise the Plaintiffs on wealth management in relation to the Accounts and that the Plaintiffs relied on such advice being given with reasonable care and skill. This gave rise to sufficient legal proximity between the Bank and the Plaintiffs for a duty of care to arise in tort.

- No policy considerations militated against such a duty of care being imposed on the Bank.

In coming to this conclusion, the Court expressly stated that it was proceeding on the *assumption* that there was no disclaimer or qualification of responsibility in the Contracts. The Court recognised that such express disclaimers can prevent a duty of care from arising in tort by negating the proximity sought to be established by the concept of an assumption of responsibility.

That said, despite finding that a duty of care arose, the Court found that the Bank did not breach that duty of care. The Court found, among other things, that:

- The various heads of breaches alleged by the Plaintiffs were not supported by evidence;

- Pan understood the risks associated with the financial products (such as accumulators), despite the Plaintiffs' claims that he did not;

- The Plaintiffs knew that they were transacting on leverage and/or margin, despite their assertion that the Bank had failed to inform them that they were doing so; and

- The standard of care owed by the Bank did not involve the Bank monitoring the Plaintiffs' portfolio in order to voluntarily provide them with regular updates as to the Accounts.

Claim for breach of alleged implied term

The Court held that there was no implied term in the Contracts for the Bank to provide information such as outstanding notional values, collateral value, total exposure, mark-to-market value and notional value on a daily basis to the Plaintiffs.

The Court was of the view that there was no gap in the Contracts which required such a term to be implied:

- The Contracts clearly provided for the type and frequency of updates that the Bank would furnish the Plaintiffs, i.e. bank statements would not – unless specifically requested by the Plaintiffs – provide information such as potential losses and the mark-to-market valuation of derivative transactions. Pan, being an experienced investor who had similar accounts with other banks, had also not requested the Bank to include such information in the bank statements. The Plaintiffs' case that such information had to be provided on a daily basis was similarly not supported by the Plaintiffs' own expert.

- The Court also rejected the Plaintiffs' submission that the parties did not and could not have contemplated the question whether the Bank was to provide the information such as outstanding notional values, collateral value, total exposure, mark-to-market value and notional value purely on the basis that the Contracts were based on the Bank's standard form contracts and were not negotiated between the parties.

The Court also found that it was not necessary to imply such a term for business efficacy, given that the Contracts contained terms which made it the *Plaintiffs'* responsibility to monitor the Accounts and ensure, amongst other things, that trading limits were not exceeded and the close-out ratios not reached.

In any event, the Court found, as a matter of fact, that:

- The Plaintiffs knew or at least had an idea of their positions in relation to the collateral value, the total exposure and the margin cover, especially when they entered into transactions under the Accounts;

- The Plaintiffs knew that they had to maintain a higher collateral value than the total exposure and to maintain the required margin cover. It is also apparent that the Plaintiffs knew how to do and did some form of calculations of the mark-to-market losses; and

- The Bank did in any case provide the mark-to-market values for equities options and derivatives in client statements for August 2008 and, after 13 October 2008, daily summary sheets which included some information on total assets, collateral value and total exposure. However, the Court took the view that the fact that the Bank subsequently provided such information to the Plaintiffs did not mean that providing the information was necessary to give efficacy to the contracts between the Plaintiffs and the Bank.

Having found in favour of the Bank on the issues of negligence and breach of an alleged implied term (as well as two other heads of claim for misrepresentation and breach of express term of Contract), the Court dismissed the Plaintiffs' suit against the Bank.

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MAREVA INJUNCTIONS

Singapore Court of Appeal Affirms Power to Grant Mareva Injunctions in Aid of Foreign Court Proceedings

The Singapore Court of Appeal has confirmed that the court has the power to grant a Mareva injunction against a defendant to Singapore court proceedings where, at the time the injunction is sought, the plaintiff intends to commence or has initiated foreign court proceedings against that defendant such that it is possible that the foreign court proceedings, rather than the Singapore court proceedings, will terminate in a judgment: *Bi Xiaoqiong (in her personal capacity and as trustee of the Xiao Qiong Bi Trust and the Alisa Wu Irrevocable Trust) v China Medical Technologies, Inc (in liquidation) and another* [2019] SGCA 50.

Our Comments

Before this landmark judgment from a 5-Judge Court of Appeal, it was unclear whether the Singapore courts have the power to grant Mareva injunctions in aid of foreign court proceedings.

This decision now confirms that a plaintiff can seek a Mareva injunction from a Singapore court to assist in the enforcement of an anticipated judgment from a foreign court provided that the plaintiff has an accrued cause of action that is justiciable in a Singapore court and the Singapore court has *in personam* jurisdiction over the defendant, and therefore provides an important additional option in the execution of a claimant's litigation strategy in cross-border claims.

This update takes a look at the Court of Appeal's decision.

Background

The key facts relevant to the issues discussed in this update are summarised below.

The first and second respondents (collectively, "**Respondents**") were related companies engaged in, among other things, the development, manufacture and marketing of advanced surgical and medical equipment in China.

The appellant was one Ms Bi Xiaoqing ("**Appellant**"). She was the wife of one Mr Wu Xiaodong ("**Wu**"), who had founded and ran the first Respondent until it was wound up in 2012.

Following an investigation into the affairs of the Respondents, the liquidators of the first Respondent determined that as much as US$521.8m had been fraudulently misappropriated from the Respondents by members of their former management.

The Respondents therefore commenced a series of legal proceedings against those persons in, first, Hong Kong, and then Singapore.

In the Hong Kong proceedings commenced on August 2013 and December 2016, the Respondents brought claims of, among other things, breach of fiduciary duties, breach of trust, conspiracy, money had and received, and knowing receipt against Wu and various other persons, including the Appellant. On 11 December 2017, the Respondents obtained from the Hong Kong High Court a worldwide Mareva injunction against, among others, Wu and the Appellant which specifically identified, among other things, the property and bank accounts of the appellant in Singapore

On 13 December 2017, the Respondents commenced proceedings in the Singapore High Court on substantially the same claims and cause of action as those pursued in the December 2016 Hong Kong suit and, at the same time, applied for Mareva injunctions against Wu and the Appellant to prevent them from disposing of their assets in Singapore only. On 4 January 2018, the Singapore High Court granted the application against Wu on an *ex parte* basis but adjourned the hearing in respect of the Appellant.

The Respondents then sought a stay of the Singapore proceedings pending the outcome of the Hong Kong proceedings, on the basis that they considered Hong Kong to be the most appropriate forum to settle the dispute as well as to avoid duplicative proceedings.

The High Court's Decision

On 13 August 2018, the High Court granted the stay and the Mareva injunction against the Appellant and held, among other things, that:

- It was undisputed between the parties that the Respondents had a reasonable accrued cause of action recognisable in a Singapore court, that Wu and the Appellant had assets in Singapore that could be subject to the injunction, and that the Singapore court had *in personam* jurisdiction over the Appellant as she was properly served with the writ;

- Section 4(10) of the Civil Law Act (Cap 43, 1999 Rev Ed) ("**CLA**") confers on the court the power to grant a "*mandatory order or an injunction*" in all cases where it is "*just or convenient*" to do so. As the courts have recognised that Mareva injunctions (both domestic and worldwide) fall within the ambit of "*mandatory order or injunction*", the ambit of Section 4(10) allows the court to order a Mareva injunction even in aid of foreign court proceedings, so long as it appears just or convenient to the court that the order be made;

- The prerequisites for the exercise of the court's power to grant a Mareva injunction are that the court must have *in personam* jurisdiction over the defendant and the plaintiff must have a reasonable accrued cause of action recognisable by the court;

- With regard to the requirement that a plaintiff must have an "*accrued cause of action against the defendant that is justiciable in a Singapore court*", a claim is justiciable if "*it is one for a substantive relief which the court has jurisdiction to grant and is a claim that can be tried by that court*". That the court subsequently declines to do so in favour of proceedings elsewhere does not make the cause of action non-justiciable in that court; and

- The facts justified the grant of the Mareva injunction. The claims against the Appellant were for dishonest assistance in the alleged fraud, knowing receipt of the stolen proceeds, and restitution for moneys had and received. At the very least, the claims for knowing receipt and moneys had and received crossed the threshold of a good arguable case, and there was solid evidence to demonstrate a real risk of asset dissipation by the Appellant.

The Appellant appealed to the Court of Appeal against the High Court's decision on the grounds that:

- The legislative intent underlying Section 4(10) of the CLA was to aid in the administration of cases *in Singapore*. Therefore, the High Court Judge had erred in relying on cases where Mareva relief had been granted in aid of a local judgment when the present case involved a Mareva injunction in aid of an anticipated judgment from Hong Kong, which according to the Appellant, fell outside the contemplated scope of Section 4(10) of the CLA.

- It is a pre-requisite to the court's power to grant interlocutory relief under Section 4(10) of the CLA that the plaintiff has an accrued cause of action that *will* terminate in a judgment in Singapore. Therefore, once a case is stayed, there would no longer be any claim that *will* terminate in a judgment in Singapore, and hence the court would no longer have the requisite jurisdiction to grant the Mareva injunction.

The Court of Appeal's Decision

The main issue before the Court of Appeal was whether the Singapore court has the power to grant a Mareva injunction against a defendant to Singapore proceedings where, at the time of the application, the plaintiff has taken out foreign court proceedings in respect of the same cause of action and intends to pursue its substantive remedy in the foreign court.

In this connection, two sub-issues arose for the Court of Appeal's consideration:

(a) Whether Section 4(10) of the CLA confers on the court the power to grant a Mareva injunction in aid of foreign court proceedings; and

(b) Whether there is a requirement that, for the court to grant a Mareva injunction under Section 4(10) of the CLA, the cause of action in support of which the Mareva injunction is sought will (or must) terminate in a judgment in Singapore.

The Court of Appeal was of the view that the first sub-issue was essentially a matter of statutory interpretation and held that Section 4(10) of the CLA does confer such power on the Singapore court. This was because, among other things:

- It was evident from the broad language used in Section 4(10) of the CLA that the Singapore court is conferred a wide power to grant mandatory orders or injunctions (including Mareva injunctions), with the only express requirements being that the injunction must be of an "*interlocutory*" nature, and that it can be made only in "*cases in which it appears to the court to be just or convenient that such order should be made*"; and

- The ordinary meaning of "*injunction*" (being "*a court order commanding or preventing an action*") does not include the requirement that it is to be made for the purpose of supporting only local proceedings, since the purpose for which an injunction is obtained is not ordinarily an element in the definition or meaning of "*injunction*".

As to the second sub-issue, the Court of Appeal held that, in addition to the aforementioned express requirements in Section 4(10) of the CLA, only two other requirements need to be fulfilled for the grant of a Mareva injunction, namely:

- The court must have *in personam* jurisdiction over the defendant; and

- The plaintiff must have a reasonable accrued cause of action against the defendant in Singapore.

The Court of Appeal rejected the Appellant's submission that there is a third requirement that needs to be fulfilled before the Singapore court can grant a Mareva injunction – i.e. that the cause of action against the defendant must terminate in a judgment rendered by the court that issues the injunction – on the basis that even where the Singapore action has been stayed, the Singapore court nevertheless retains a residual jurisdiction over the underlying cause of action, which is *per se* sufficient to ground the court's jurisdiction to allow the continuation of the Mareva injunction.

Pertinently, the Court of Appeal observed, among other things, that:

- The concept of the Singapore court retaining a residual jurisdiction over the underlying cause action where the action has been stayed (as opposed to the action having been discontinued or struck out) is a sound juridical basis to ground the court's power to grant a Mareva injunction;

- An order by the court to stay an action merely indicates that the proceedings will be temporarily halted. To this end, the interim nature of a stay implies that the court contemplates, and leaves open the possibility, that at some stage, the matter would be revived and dealt with – whether by proceeding to judgment, or by being discontinued. In any case, and until such time, the action remains on the court's record, and is "*alive though asleep*". If no further action is ever contemplated in the action, then the proper course is to have the proceedings discontinued or struck out;

- Under Section 4(10) of the CLA, the Singapore court's power to grant a Mareva injunction is ancillary to its jurisdiction over the substantive cause of action before the Singapore court. The question whether there may be foreign court proceedings in aid of which a Mareva injunction obtained in Singapore may be used is irrelevant to that inquiry. What the party applying for the Mareva injunction seeks to do with the injunction – or indeed his litigation strategy – does not have any bearing whatsoever on the Singapore court's power to grant the injunction (although the applicant's intentions might affect how the Singapore court will choose to *exercise* that power, for example, where it can be shown that the Mareva injunction appears to be for the ulterior motive of placing pressure on the defendant); and

- Notwithstanding the above, the Court of Appeal also recognised that should the Respondents fail in their action in Hong Kong and subsequently seek to revive the stayed Singapore action, the Respondent would have to overcome the obstacles of re-litigation; in particular, estoppel and/or *res judicata*.

It should be highlighted, however, that it remains necessary for a Mareva injunction to be premised on an accrued cause of action that is justiciable in a Singapore court; a Mareva injunction that is free-standing in the sense that the application stands alone without any other claim for substantive relief or final judgment would not be granted by the Singapore court. Moreover, the Court of Appeal noted that where it is clear that a plaintiff has no intention of pursuing an action in Singapore at all and wants a free-standing Mareva injunction, the court should not exercise its power to grant the injunction sought.

The Court of Appeal upheld the High Court's findings that the Respondents had a good arguable case on the merits of its claims and that there was a real risk that the Appellant would dissipate her assets to frustrate the enforcement of an anticipated judgment of the court.

In light of the above, the Court of Appeal affirmed the grant of the Mareva injunction and dismissed the appeal.

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FOREIGN BANKRUPTCY ORDERS

Singapore High Court Clarifies Requirements for Granting Recognition to Foreign Bankruptcy Order Under the Common Law

The Singapore High Court has clarified the requirements that must be satisfied before a Singapore court would grant recognition to a foreign bankruptcy order under the common law: *Heince Tombak Simanjuntak and others v Paulus Tannos and others* [2019] SGHC 216.

Our Comments

The High Court recognised that there may be some room for a regional recognition regime or common approach as not all issues may be resolved by the UNCITRAL Model Law on Cross-Border Insolvency ("**Model Law**") (which currently applies only to foreign corporate insolvency orders) even if it were extended in Singapore to include personal bankruptcy orders. The High Court had, prior to the Model Law coming into force, recognised various foreign corporate insolvency orders, and with this decision, extended the recognition regime to foreign bankruptcy orders.

This decision sets out the position relating to the recognition of foreign bankruptcy orders under common law in Singapore and the requirements which must be satisfied in determining whether to grant recognition of that foreign bankruptcy order.

The High Court decision also clarified that there is no requirement of reciprocity in recognition a foreign bankruptcy order, i.e., there is no requirement under Singapore common law that in order for there to be recognition of an Indonesian bankruptcy order, an Indonesian court must be shown to similarly recognise Singapore bankruptcy orders.

Melanie Ho Pei Shien, Chang Man Phing and Wan Rui Jie Erwin of WongPartnership acted for the successful Applicants.

This update takes a look at the High Court's decision.

Background

The key facts relevant to the issues discussed in this update are summarised below.

Bankruptcy and insolvency proceedings were commenced in Indonesia against four individuals ("**Respondents**") and a related company. This led to orders by the Indonesian court for a moratorium on debt repayment obligations (*Penundaan Kewajiban Pembayaran Utang* or PKPU decision) which culminated in a bankruptcy order against the Respondents, and the appointment of Receivers and Administrators in Indonesia (collectively, "**Indonesian Bankruptcy Orders**").

The Receivers and Administrators ("**Applicants**") subsequently applied to the Singapore High Court for recognition of the Indonesian Bankruptcy Orders in Singapore. Recognition was granted in an *ex parte* hearing, together with orders that the Applicants be empowered to administer, realise and distribute the Respondents' property in Singapore.

The Respondents then applied to have the orders granting recognition of the Indonesian Bankruptcy Orders set aside.

The High Court's Decision

Ruling in favour of the Applicants, the High Court held that the grounds for common law recognition of the Indonesian Bankruptcy Orders were satisfied, and proceeded to grant recognition of the Indonesian Bankruptcy Orders in Singapore, without any stay to accommodate the Respondents' alleged appeal to the Supreme Court of Indonesia.

Pertinently, recognition of the Indonesian Bankruptcy Orders was made under the common law, as opposed to the Model Law (as in force in Singapore), as the latter does not extend to personal bankruptcy orders, and the Indonesian Bankruptcy Orders in any event pre-dated the coming into force of the Model Law.

After examining the principles relating to the recognition of foreign bankruptcy orders at common law, the High Court set out the following requirements that must be satisfied before a Singapore court would grant recognition to a foreign bankruptcy order:

- First, the foreign bankruptcy order is made by a court of competent jurisdiction;
- Second, that court must have jurisdiction on the basis of:
    - The debtor's domicile or residence; or
    - Submission by the debtor to the jurisdiction of the court;
- Third, the foreign bankruptcy order must be final and conclusive; and
- Fourth, no defences to recognition apply.

The High Court rejected the notion that the recognition doctrine should not apply to foreign bankruptcy orders (as it does with respect to foreign judgments) on the premise that such orders are not judgments which impact only the parties to the judgments but instead bind the whole world. It took the view that the fact that a bankruptcy order affects the whole world does not make it different from other judgments or orders (including corporate insolvency orders).

That said, the High Court accepted that the effect of a bankruptcy order should be taken into account when evaluating the scope of recognition and assistance to be ordered, since recognition of the foreign bankruptcy proceedings and the appointment of foreign insolvency practitioners gives rise to more issues than recognition and enforcement of foreign money judgments. For example, the court's assistance would be

required in dealings with assets, monies and information, which extend further that the assistance required for the enforcement of foreign judgments. The effects on third parties may also be more extensive.

For these reasons, the High Court highlighted that it might be appropriate for the court to impose certain restrictions or requirements (such as the expatriation or taking possession of certain assets, etc.), and that the Model Law could provide guidance on the requirements to be imposed.

In the present case, the High Court found that:

- The Indonesian court had jurisdiction on the basis of submission by the Respondents;
- The Indonesian Bankruptcy Orders were final and conclusive, as the Respondents had failed to demonstrate that there was a pending substantive appeal to the Supreme Court of Indonesia; and
- The Respondents had failed to prove their various alleged defences against the recognition of the Indonesian Bankruptcy Orders.

The Court also held that, insofar as the recognition of Indonesian Bankruptcy Orders were concerned, there was no requirement of reciprocity. While there were indications that an Indonesian court would not in any situation recognise a Singapore insolvency or restructuring decision, or the appointment of Singapore receivers and managers, the position in Singapore is that the common law has not imposed such a requirement. While there may be advantages to introducing an approach premised on reciprocity, this would be a significant departure from the common law which would be outside the usual remit of a *puisne* Judge.

In the circumstances, the High Court granted the Applicants full recognition of the Indonesian Bankruptcy Orders, and held that the Applicants were, among other things, empowered to administer the Respondents' property in Singapore (save that leave of court should be obtained for any transfers of real or immovable property and for the repatriation of any assets out of Singapore) and authorised to seek and receive information on the Respondents' finances from various banks, subject to any moneys having to remain in the existing accounts.

At an application for a stay pending appeal, the High Court made slight modifications to the original recognition and assistance orders to preserve the position pending appeal.

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SOME OF OUR OTHER UPDATES

DATE	TITLE
29 October 2019	ChinaWatch: China Revises Its Exchange Control Rules
9 September 2019	WPG Update: Indonesia – Practical Tips to Streamline Dispute Resolution Process from an Early Stage
29 August 2019	IPMT Update: Trusted Data Sharing Framework and the New Guide to Data Valuation for Data Sharing
27 August 2019	CaseWatch: Singapore High Court Clarifies the Legal Effect of a Defects Liability Clause

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