

IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2024] SGHC 242

Originating Application No 626 of 2024

In the matter of Part 11 and Section 252 of the Insolvency, Restructuring and
Dissolution Act 2018 (2020 Rev Ed)

And

In the matter of Articles 15 and 19 of the UNCITRAL Model Law on
Cross-Border Insolvency

And

In the matter of Sapura 1200 Ltd

- (1) Sapura 1200 Ltd
- (2) Mohd Anuar bin Taib
- (3) Chew Seng Heng
- (4) Norzaimah binti Maarof

... Applicants

GROUNDS OF DECISION

[Insolvency Law — Cross-border insolvency — Coordination of cross-border
insolvency proceedings]

[Insolvency Law — Cross-border insolvency — Recognition of foreign
insolvency proceedings]

TABLE OF CONTENTS

BACKGROUND	1
THE DECISION ON THE RECOGNITION APPLICATION.....	3
COURT-TO-COURT COMMUNICATIONS AND THE DRAFT JIN ADMIRALTY GUIDELINES	4
CONCLUSION.....	5

This judgment is subject to final editorial corrections approved by the court and/or redaction pursuant to the publisher's duty in compliance with the law, for publication in LawNet and/or the Singapore Law Reports.

Re Sapura 1200 Ltd

[2024] SGHC 242

General Division of the High Court — Originating Application No 626 of 2024

Aedit Abdullah J
5 July, 2 September 2024

18 September 2024

Aedit Abdullah J:

1 These brief grounds are issued to capture the use of the Protocol on Court-to-Court Communication and Cooperation between Malaysia and Singapore in Cross-Border Corporate Insolvency Matters (the “Protocol”) and the application of the draft Judicial Insolvency Network guidelines on the Management of Applications for the Arrest of Vessels where the Vessel Owner or Bareboat Charterer is the Subject of Cross-Border Insolvency Proceedings (the “Draft JIN Admiralty Guidelines”). It is hoped that this will guide practitioners in the field.

Background

2 The first applicant, Sapura 1200 Ltd (the “Company”) is a direct subsidiary of Sapura Offshore Sdn Bhd, which is in turn a subsidiary of Sapura Energy Berhad. Sapura Energy Berhad and its direct and indirect subsidiaries form the Sapura group of companies (the “Sapura Group”).

3 On 20 February 2024, the Sapura Group applied to the Malaysia Court for an order to (a) convene meetings of its creditors; and (b) restrain all proceedings against the Sapura Group and/or its assets for three months from 11 March 2024 (the “Malaysian Reorganisation Proceeding”).¹ An order in terms of the orders sought was granted on 7 March 2024.² The restraining order was further extended until 11 March 2025.³

4 The Company applied for the Malaysian Reorganisation Proceeding to be recognised as a foreign main proceeding in Singapore, in accordance with Art 2(f) of the UNCITRAL Model Law on Cross-Border Insolvency (30 May 1997) (the “Model Law”), which is implemented by way of the Third Schedule and s 252 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the “IRDA”) (the “Recognition Application”). The Company also sought corresponding orders for, amongst other things, a recognition of the second to fourth applicants being recognised as foreign representatives within the meaning of Art 2(i) of the Model Law, and a stay against: (a) the commencement or continuation of any actions or proceedings against the Company, including any arrest of the “Sapura 1200” vessel; (b) an execution against the Company’s property; and (c) the right to transfer, encumber or otherwise dispose of any of the Company’s property.

5 The Company also sought an interim order, pursuant to Art 19(1) of the Model Law, for a stay of any proceedings, execution or other legal process being commenced or continued against the Company or its property and any

¹ Applicants’ Written Submissions dated 28 August 2024 (“AWS-2”) at para 17.

² AWS-2 at para 18.

³ AWS-2 at para 18.

enforcement of security over the Company’s property, pending the hearing and determination of the Recognition Application.⁴

The decision on the Recognition Application

6 I granted the interim relief sought. The requirements in Art 19(1) of the Model Law were satisfied. The Company had filed an application for recognition.⁵ The application for interim relief was brought at the request of the second to fourth applicants who were validly appointed and constituted “foreign representatives” under Art 2(i) of the Model Law.⁶ There was an urgent need for the protection of the Company’s property and, specifically, the “Sapura 1200” vessel. The vessel was scheduled to arrive in Singapore on 7 July 2024 and undergo dry docking in Singapore until 15 or 16 August 2024.⁷ I accepted that the vessel was a key asset of the Company – it was employed in various projects, and its arrest would cause the Company to be in breach of the relevant project’s contracts and deprived of income therefrom.⁸ There was a real risk that the Company’s creditors would attempt an arrest of the vessel as the creditors had issued several letters of demand.⁹

7 The Recognition Application, and the consequent orders prayed for, were also granted. The requirements stipulated within Art 17 of the Model Law for the recognition of a foreign main proceeding were satisfied. The Malaysian Reorganisation Proceeding was a “foreign proceeding” in accordance with

⁴ Applicants’ Written Submissions dated 1 July 2024 (“AWS-1”) at para 5; Affidavit of Norzaimah binti Maarof dated 27 June 2024 (“NM-1”) at para 7.

⁵ AWS-1 at para 13.

⁶ AWS-1 at para 14.

⁷ AWS-1 at para 3.

⁸ AWS-1 at para 15.

⁹ AWS-1 at para 15.

Art 2(h) of the Model Law: see *Ascentra Holdings, Inc (in official liquidation) and others v SPGK Pte Ltd* [2023] 2 SLR 421 at [29]. The other requirements under Art 17 – for the application to be brought by “foreign representatives”, in accordance with Arts 15(2) and 15(3), and submitted to a competent court under Art 4 – were also met. I made a further order for the applicants to write in to court with the details of any vessels owned by the Company which may be entering Singapore, at least 24 hours before such entry and an advertisement to be made indicating the protection against the arrest of the named vessel.

Court-to-court communications and the Draft JIN Admiralty Guidelines

8 The Protocol was entered into on 23 July 2021 between the Superior Courts of Malaysia (*ie*, the High Courts, Court of Appeal and the Federal Court of Malaysia) and the Supreme Court of Singapore. It covers matters relating to insolvency or the adjustment of debts of corporations, namely, winding up proceedings, judicial management, schemes of arrangement and receivership. The Protocol allows for the initiation of court-to-court communications and seeks to facilitate the efficient and timely coordination and administration of cross-border cases commenced in Malaysia and Singapore, enhance judicial efficacy and reduce business costs.

9 The Draft JIN Admiralty Guidelines have a similar objective of enhancing the coordination and cooperation of the courts in managing applications for the arrest of vessels, where an entity concerned is undergoing cross-border insolvency or restructuring proceedings. The guidelines are still in draft form, *ie*, they have not been formally adopted by the Judicial Insolvency Network, but even the current draft provides useful guidance for the better management of these cases. Measures under the Draft JIN Admiralty Guidelines are aimed at ensuring that there is proper consideration of the impact of arrest

on restructuring proceedings, and conversely, the impact of restructuring on recovery on arrest. These include having the applicant for recognition informing the court in the arresting jurisdiction of vessels that may be subject to arrest, the existence of orders affecting the situation, and the advertisement of any orders and decisions made. In the present case, advertising and notification orders were made at both the interim and final applications.

10 Court-to-court communications were held with the Malaysian court to apprise the Malaysian court of the steps taken in Singapore, and the application of the Draft JIN Admiralty Guidelines. Such communication also enabled the efficient management of potential further applications by other entities of the Sapura Group for recognition of the Malaysian Reorganisation Proceedings in Singapore to restrain the arrest of any vessel owned or bareboat chartered by the Sapura Group.

Conclusion

11 It is hoped that the publication of this decision will bring greater awareness of the availability of the Protocol as well as the work being done on the Draft JIN Admiralty Guidelines.

Aedit Abdullah
Judge of the High Court

Han Guangyuan Keith and Angela Phoon Yan Ling (Oon & Bazul LLP) for the applicants.