IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2025] SGHC(I) 4

Originating Application No 5 of 2024 and Summons No 57 of 2024

In the matter of Part 11 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Section 252 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of the Third Schedule of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of the UNCITRAL Model Law on Cross-Border Insolvency

And

In the matter of the voluntary petition for relief in the United States Bankruptcy Court for the District of Delaware under Chapter 11 of Title 11 of the United States Code (11 USC. § 101, et seq.), *In re Terraform Labs Pte. Ltd.,* Case No. 24-10070

And

In the matter of Terraform Labs Pte. Ltd.

Terraform Labs Pte. Ltd.

… *Applicant*

GROUNDS OF DECISION

[Insolvency Law — Cross-border insolvency]

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Re Terraform Labs Pte Ltd

[2025] SGHC(I) 4

Singapore International Commercial Court — Originating Application No 5 of 2024 and Summons No 57 of 2024
James Michael Peck IJ
28 January 2025

21 February 2025

James Michael Peck IJ:

Introduction

1 These are the grounds of decision for judgments delivered orally on 28 January 2025 by the Singapore International Commercial Court (the "SICC" or the "Court") in the matter of SIC/SUM 57/2024 ("SUM 57"). In SUM 57, the applicant sought recognition of its plan of liquidation under chapter 11 of Title 11 of the United States Code (11 USC. § 101, et seq.) ("Chapter 11") and the order of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") confirming that plan (the "Confirmation Order"). The applicant also sought other appropriate reliefs that may be granted in the discretion of the Court under Art 21 of the UNCITRAL Model Law on Cross-Border Insolvency as adopted in Singapore by way of s 252 and the Third Schedule of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "SG Model Law"). For context, the proceeding and my judgment in SIC/OA 5/2024 ("OA 5") will also be discussed. As noted below, the two-hour

virtual hearing for SUM 57 included a surprising and inappropriate last-minute request for an adjournment that was firmly rejected by the Court.

Background in relation to OA 5 and SUM 57

2 SUM 57 was filed as part of OA 5. In OA 5, which was filed on 26 March 2024, Terraform Labs Pte. Ltd. ("TFL") sought, amongst others, an order for the recognition of its reorganisation proceedings commenced under Chapter 11 in the Bankruptcy Court as a foreign non-main proceeding under the SG Model Law.[1] On 30 May 2024, the Court heard OA 5. It is worth noting that TFL had raised factors pointing in favour of the US being the Centre of Main Interests ("COMI") for TFL, which might permit recognition on the basis that the Chapter 11 case was a foreign main proceeding.[2] However, TFL sought recognition as a non-main case as it was easier to prove based on the undisputed showing that TFL had an establishment in the US. Because no evidence was ever presented regarding the proper inferences to be drawn as to the COMI for TFL, the Court never considered whether the COMI for TFL is in the US or Singapore. The proceeding in the Bankruptcy Court clearly constituted "foreign proceeding[s]" within the meaning of Art 2(*h*) (*Ascentra Holdings, Inc (in official liquidation) and others v SPGK Pte Ltd* [2023] 2 SLR 421 at [28]–[29]) and as provided under Art 17(1)(*a*) of the SG Model Law. In SUM 57, the "main" / "non-main" distinction had no practical significance in granting discretionary relief under the SG Model Law – as will be discussed, the reliefs in SUM 57 were granted because, amongst other reasons, the procedural requirements were satisfied.

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1 SIC/OA 5/2024 filed on 26 March 2024.

2 Applicant's written submissions dated 20 May 2024 at para 30.

3 On the same day of the OA 5 hearing, the Court recognised the proceeding in the Bankruptcy Court as a foreign non-main proceeding (after the right to recognition was not challenged). TFL was also recognised as the foreign representative within the meaning of Art 2(*i*) of the SG Model Law.[3]

4 Subsequently, TFL commenced SUM 57 on 13 November 2024, which involved an application by TFL for certain reliefs in aid of the implementation of its plan of liquidation providing for the appointment of a plan administrator and an orderly wind down of TFL under Chapter 11 (the "Chapter 11 Plan"). The Confirmation Order was entered on 20 September 2024.[4]

5 TFL sought recognition of the Chapter 11 Plan and the Confirmation Order as well as other appropriate reliefs that may be granted in the discretion of the Court under Art 21 of the SG Model Law. The requested additional reliefs include: (a) allowing TFL to administer and realise all or any part of its property and assets located in Singapore in accordance with the Chapter 11 Plan and the Confirmation Order; (b) allowing TFL to take all other actions as may be necessary or appropriate to effectuate, implement and consummate the Chapter 11 Plan and the Confirmation Order; and (c) an order providing that no actions or proceedings may be commenced or continued with respect to TFL's property, rights, obligations or liabilities (except for the pending proceeding in SIC/OA 3/2024 ("OA 3")) in relation to the claims that have been compromised under the Chapter 11 Plan.[5] Prayer number five seeking the stay of any

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3 Notes of Evidence ("NEs") dated 30 May 2024 at page 15 lines 22–24.

4 The United States Bankruptcy Court for the District of Delaware's notice of (I) entry of order confirming second amended Chapter 11 plan of liquidation of Terraform Labs Pte. Ltd. and Terraform Labs Limited and (II) effective date.

5 SIC/SUM 57/2024 filed on 13 November 2024.

execution against TFL's property in Singapore (save as ordered by the courts of the Republic of Singapore) was withdrawn by TFL prior to the hearing.[6]

6 The Court had every reason to anticipate that the hearing in relation to SUM 57 would move forward without opposition due to various factors including the procedural fairness, transparency and consensual nature of TFL's case under Chapter 11 and the outcome of the hearing on 30 May 2024, where the Court had given recognition orders pertaining to other aspects of TFL's Chapter 11 case (at [2] above).

7 Tellingly and of great importance to an orderly process, however, the Court was on constructive notice that the requested reliefs in fact were unopposed. In compliance with directions from the Court, TFL had filed its written submissions and bundle of authorities on 7 January 2025, the same deadline that had been set for any party to file written submissions in respect of SUM 57.[7] No party other than TFL made any filing on that date or at any time within the three-week period before the scheduled hearing on SUM 57, a persuasive if not conclusive signal that the hearing would be taking place without opposition.

8 Proceedings in SUM 57, however, turned out to be more contentious than expected due to the impact of another active case involving claims against TFL that is currently pending before the SICC. This other litigation, OA 3, predates TFL's case under Chapter 11. OA 3 was assigned to and is being handled by another International Judge. The two International Judges involved in these separate cases with overlapping underlying subject matter have acted

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6 Letter from WongPartnership LLP dated 6 December 2024 at para 3.

7 Letter from WongPartnership LLP dated 25 November 2024 at para 5 and Letter from the Registry dated 2 December 2024 at para 2(a).

independently of one another and have never communicated regarding the substance or the merits of these two cases. Accordingly, the Court's understanding of OA 3 within the current cross-border case for TFL understandably is quite limited and based solely on information provided by counsel in response to questions from the Court. I now set out the background of the adjournment application and the reasons for my decision to deny the requested relief.

Oral motion for an adjournment

Background in relation to OA 3

9 In OA 3, a representative group of claimants acting for themselves and a total of 370 creditors of TFL (known as the "Beltran Parties") are seeking to impose liability on TFL and recover losses arising out of transactions executed on TFL's blockchain platform. The action designated as OA 3 was brought prior to TFL's requests for recognition in this Court under the SG Model Law.

10 Notably, as a condition to releasing a Mareva injunction freezing order obtained by the Beltran Parties that had encumbered TFL's assets, cash in the amount of USD 56,948,675.49 was deposited by TFL with the SICC as security for satisfaction of any future final judgement or settlement that might be reached with respect to the claims made against TFL in OA 3. This fund is referred to as the "Singapore Escrow".

11 Because of this ability to tap into this significant dedicated source of payment if they should prevail in proving TFL's liability for their claimed losses, the Beltran Parties were separately classified as secured creditors under the Chapter 11 Plan. The Singapore Escrow, depending on the outcome of

OA 3, conceivably could also become available, in whole or in part, for distribution to other creditors of TFL.

Disposition of oral motion for an adjournment

12 Based on the unopposed written submissions filed by TFL in support of the grant of relief in SUM 57, the Court anticipated that the hearing would proceed smoothly and without controversy, but that premise proved to be incorrect.

13 Without prior notice to the Court or other interested parties, the hearing, almost immediately, took on the character of a contested proceeding due to last-minute procedural and substantive arguments made by counsel for the Beltran Parties. For reasons that were never satisfactorily explained, these arguments made with the pretext of seeking an adjournment had not been previewed ahead of the hearing either in correspondence to the Registry or timely written submissions and came as a complete surprise.

14 That sort of liberty with procedure was improper, should not have occurred here, and except in rare situations of genuine unforeseeable emergency and clear prejudice to the moving party should not be allowed again in future proceedings with respect to applications comparable to SUM 57 that may be brought in the SICC.

15 Parties and the Court are entitled to fair advance notice of issues to be adjudicated and should not be caught off guard and disadvantaged as happened in this instance. The oral motion to adjourn made at the start of the hearing prompted a lengthy argument over whether the Court should proceed with the previously noticed hearing and grant the reliefs requested by TFL under the SG

Model Law. This calculated and disruptive manoeuvre distracted from the focus of SUM 57.

16 Despite the lack of prior notice, the Court proceeded to hear arguments (all without the benefit of written submissions) concerning the asserted need for a delay in moving forward with SUM 57 and considered the substantive points raised by counsel for the Beltran Parties who alleged possible prejudice and deprivation of adequate protection with respect to the contingent and undetermined disputed claims of the Beltran Parties in OA 3.

17 The position being advanced was based on speculative and unsubstantiated concerns as to the potential adverse impact on the claims of the Beltran Parties that might flow from granting recognition of the Confirmation Order and other requested relief prior to a final disposition of a pending procedural motion, SIC/SUM 56/2024 ("SUM 56"), that was made under OA 3 seeking dismissal of that representative action against TFL. Counsel for the Beltran Parties argued that if the relief sought in SUM 56 were granted in its entirety, claims made in OA 3 would be stricken and the Singapore Escrow would be released to TFL, thereby depriving the Beltran Parties of security if the Court were to allow them to commence fresh suits against TFL. The concern was that the injunction found in both the Chapter 11 Plan and prayer number four of SUM 57 would bar them from commencing those fresh claims in the Singapore court.[8]

18 The argument stressed the potential loss of recourse to the Singapore Escrow but disregarded the fact that the potential motion to strike the representative claims was a known risk, that proceedings in OA 3 had been

[8] NEs dated 28 January 2025 at page 9 lines 9–25.

expressly carved out from the automatic stay by means of a formal stipulation approved by the Bankruptcy Court and that the Chapter 11 Plan had separately classified the Beltran Parties as secured creditors of TFL.

19 Their allowed plan treatment was favourable, deferential and meant that they were unimpaired as disputed, contingent secured creditors. They had the opportunity without interference to litigate their claims against TFL in Singapore in OA 3, but, of course, were not guaranteed a recovery.

20 Nonetheless, counsel for the Beltran Parties contended that recognition of TFL's Chapter 11 Plan under the SG Model Law should be deferred pending resolution of SUM 56, asserting that his clients should not be restrained from seeking possible additional remedies against TFL in Singapore even if the prosecution of claims in OA 3 were unsuccessful,[9] a contention seemingly grounded in the unsupportable proposition that the Beltran Parties had an interest in the Singapore Escrow extending beyond the four corners of that litigation.

21 Upon consideration of arguments from counsel for all interested parties, the Court determined that the claim of an emergency was baseless and entirely without merit and that the same substantive points could have been presented weeks earlier with proper notice. The Court concluded that going forward with the previously noticed hearing on recognition and additional reliefs was proper and would not adversely impact the adequate protection and security measures already afforded to the Beltran Parties.

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9 NEs dated 28 January 2025 at page 12 lines 7–12.

22 This eleventh hour attempt to obstruct or delay the scheduled hearing in SUM 57 until after the clarification of the right to a recovery in OA 3 wasted considerable time and was a failed effort, although the improvisational aspects of the hearing did expose a potential hole in the applicable rules of practice in the SICC.

23 It seems that motions to adjourn without reasonable prior notice such as the one described in this decision are not mentioned in the Singapore International Commercial Court Rules 2021 (the "SICC Rules"). Practice Direction 102 of the Singapore International Commercial Court Practice Directions ("SICC PDs") does state that a request for adjournment should be made at least 14 calendar days before the hearing. However, the SICC PDs apply only to proceedings that continue to be governed by the Rules of Court (2014 Rev Ed), as modified by O 110 of those Rules. Therefore, they do not apply to proceedings governed by the SICC Rules. That means, under the SICC Rules, an adjournment may be requested at any time, but presumably such a request must be for good cause and used sparingly only in those situations where the need for a delay is clearly justified and could not have been anticipated earlier.

24 In *Kiri Industries Ltd v Senda International Capital Ltd and another (Fan Jing, non-party)* [2024] SGHC(I) 7 ("*Kiri Industries*"), Roger Giles IJ dismissed an application for adjournment which was requested in the applicants' written submissions filed a few days before the hearing (at [18]). At the hearing, counsel for the applicants "did not begin by applying for an adjournment", and "was well into his substantive submissions" when attention was drawn to the request and he maintained that request (at [19]). Giles IJ dismissed the application "as an exercise in proper use of resources". "The "preparation had been done, including the obtaining of expert opinions" and

"the costs had been incurred". Further, while the other party had declined to agree to the adjournment, the applicants did not apply for the question of adjournment to be considered ahead of the hearing. Counsel "were gathered in the courtroom and were ready to proceed" (at [21]). Moreover, there was no substance in the application for adjournment (at [22]).

25 In the present case, the last-minute request for adjournment was more surprising than the one in *Kiri Industries*. Counsel for the Beltran Parties did not put in any written submissions or show any indication of such a request ahead of the hearing. They had only informed TFL's Singapore counsel the evening before the hearing about the possibility of such a request.[10] Notice of the request was only given to the Court during the hearing itself.

26 It should be noted that counsel for the Beltran Parties was civil and respectful throughout the hearing and apologised for seeking the adjournment without having given timely notice of his intent to do so. Nevertheless, emergency relief requires a real emergency. That was not the case in SUM 57.

27 This was no emergency, but an argument predicated on the known risks of litigation in OA 3. When asked directly by the Court if the Beltran Parties were objecting to the substantive relief requested in SUM 57, counsel for the Beltran Parties confirmed that the relief was being opposed on the same grounds argued in connection with the requested adjournment. That may imply that the adjournment was always intended as a platform for opposing the grant of the relief requested in SUM 57. Regardless of the motivation, it was ill-advised and unsuccessful.

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[10] NEs dated 28 January 2025 at page 19 line 29–page 20 line 2.

Decision on SUM 57

Participation of the US counsel for the plan administrator

28 Before explaining the financial circumstances that drove TFL to need reliefs under the SG Model Law, the Court addresses a complication relating to the role of counsel for the plan administrator from the United States ("US counsel").

29 Under s 36P(1A)(*a*) of the Legal Profession Act 1966 (2020 Rev Ed) (the "Legal Profession Act"), the plan administrator's US counsel, being a foreign lawyer granted full registration under s 36P of the Legal Profession Act, may *not*, in any "relevant proceedings" prescribed by the Legal Profession (Representation in Singapore International Commercial Court) Rules 2014 (the "LP (Representation in SICC) Rules"), plead any matter without the permission of the SICC. As provided under r 3A(2)(*a*) of the LP (Representation in SICC) Rules, "relevant proceedings" include any proceedings mentioned in s 18D(2)(*c*) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed). That is, "proceedings relating to corporate insolvency, restructuring or dissolution under the Insolvency, Restructuring and Dissolution Act 2018", "that are international and commercial in nature" and "satisfy such conditions as the Rules of Court may prescribe". Thus, SUM 57 fit the definition of a relevant proceeding, and the plan administrator's US counsel could not plead any matter in relation to SUM 57 without the Court's permission.

30 Such an application for permission may be made "before, at the same time as, or after the commencement or the relevant proceedings or the preliminary proceedings, as the case may be", pursuant to O 23A r 5(1)(*b*) of the SICC Rules.

31 Under s 36P(1B) of the Legal Profession Act, in deciding whether to grant permission under s 36P(1A)(*a*) of the Legal Profession Act, the SICC may take into account any relevant factor, including the following factors listed under r 3B of the LP (Representation in SICC) Rules:

> (a) the nature of the factual and legal issues involved in the relevant proceedings;
>
> (b) the role of the foreign lawyer granted full registration in the relevant proceedings;
>
> (c) the extent of the international elements involved in the relevant proceedings, including —
>
> > (i) the amount of assets or properties in one or more foreign countries;
> >
> > (ii) the obligations and liabilities that are governed by the laws of one or more foreign countries; and
> >
> > (iii) the governing law of the underlying agreement.

32 SUM 57 was not the first time that the Court was faced with the issue of foreign representation. In *Re No Va Land Investment Group Corp* [2024] 6 SLR 76 ("*No Va Land*"), the lawyer in that case was registered under a different section of the Legal Profession Act, *viz*, s 36E, and made an application seeking permission to make submissions before the Court (at [66]). Nevertheless, the procedural requirements that needed to be satisfied were similar – the Court needed to consider if the proceeding was a "relevant proceeding", pursuant to r 3A(2) of the LP (Representation in SICC) Rules (at [67]), following which, the Court considered the factors listed r 14(1B) of the Legal Profession (Regulated Individuals) Rules 2015 ("LP(RI)R") in deciding

to grant permission under r 14(1A)(a) of the LP(RI)R (at [68]). These factors were similar to those listed at [31] above. Upon consideration of these factors, the Court in *No Va Land* allowed the lawyer's application as he had "deep background in the negotiation and documentation" of the pre-packaged scheme in question and was "fully familiar with the circumstances that produced the agreement" embodied in the pre-packaged scheme. The pre-packaged scheme "plainly was international in nature", and it was proper to allow the foreign lawyer to participate and represent his clients in the proceedings (at [72]).

33 In SUM 57, the Court had called upon the plan administrator's US Counsel to submit on the plan implementation details and the plan administrator's position on the reliefs sought in SUM 57, in order to deal with the extremely late request for adjournment and submission by the Beltran Parties to oppose SUM 57, all of which arose for the first time at the hearing itself. The plan administrator's US Counsel had permission from the Court to plead matters relating to the administration of the Chapter 11 Plan and this did not involve a submission on any matter of Singapore law. While the procedural formal requirements in O 23A rr 5(1)(*b*) and 5(1)(*c*) and O 23A r 5(2) of the SICC rules were not complied with, the exceptional circumstances in which the US counsel was specifically requested to assist the court by submitting on the administration of the Chapter 11 Plan justified the Court's waiver of the non-compliance: see O 1 r 11(6)(*a*) of the SICC Rules.

34 It is important to note that this all unfolded spontaneously in a matter arising under Article 21 of the SG Model Law where all of the factors noted (at [31] above) were satisfied. US counsel was a foreign lawyer from the United States who had useful knowledge concerning the details of the Chapter 11 Plan that plainly was international in nature. It was proper in the circumstances

presented and also helpful to the Court to permit US Counsel to plead in SUM 57.

35 What happened here was exceptional, however, and best avoided in the future by foreign lawyers exercising due care and foresight. Foreign lawyers who are planning to appear in the SICC in person or on the screen in a virtual zoom hearing must obtain permission ahead of time to cover the contingency that active participation may be required. Applying for permission from the SICC in advance of a hearing is the only proper course of action whenever foreign counsel anticipates that there may be a need to plead in a case in the SICC.

Reliefs were appropriate and fulfilled the aims of the SG Model Law

36 After the resolution of the adjournment request, counsel for TFL presented arguments on the merits of SUM 57 and submitted that all constituencies would benefit if reliefs were granted under the SG Model Law with respect to the substantially consensual Chapter 11 Plan for TFL that had entrusted ongoing wind down and administrative responsibilities to a newly appointed plan administrator.

37 The plan administrator, through US counsel, confirmed on the record that the reliefs requested by TFL were needed and would facilitate the implementation of the Chapter 11 Plan and promote orderly case administration in Singapore.

38 The Court considered the submissions of TFL's solicitors, the support offered by US counsel and the lack of any meritorious opposition to SUM 57

and concluded that the reliefs sought by TFL should be allowed, were in the best interest of creditors and were entirely appropriate under the SG Model Law.

39 The Court also determined that OA 5 should remain open in parallel with OA 3 as a procedural vehicle for any further relief that may be needed to protect the parties and to effectuate a judicially sanctioned transfer of any funds from Singapore to the US that may become available for distribution in accordance with the Chapter 11 Plan and the Confirmation Order.

40 Recognition under the SG Model Law of the Chapter 11 Plan and the Confirmation Order and approval of the reliefs requested by TFL have given effect in Singapore to a cross-border restructuring for a distressed business enterprise with significant connections to both Singapore and the US.

41 When examined from the perspective detailed in the next section, TFL needed relief from both the Bankruptcy Court and this Court to respond to the adverse consequences of regulatory litigation brought against TFL and a resulting unsustainable monetary judgement that compelled TFL to wind down its business by means of the Chapter 11 Plan.

42 The US was the jurisdiction with the most significant connections to these transformative events for TFL. The jury award forcing the business into a wind down was entered in New York (at [52] below), and the restructuring itself was designed in the US and administered in the Bankruptcy Court.

43 Granting recognition of that restructuring in this Court was a necessary final step in the process that has highlighted the utility and flexibility of the SG Model Law, further demonstrating how modified universalism can work seamlessly in practice.

44 The genesis of TFL's financial difficulties and the circumstances of its restructuring in the Bankruptcy Court are discussed briefly in the next section of this grounds of decision, followed by a brief overview of the SG Model Law and reasons for concluding that the reliefs requested by TFL are appropriate and consistent with a proper application of Art 21(1) of the SG Model Law.

TFL's securities litigation

45 TFL was incorporated in Singapore on 23 April 2018 as a limited exempt private company and engaged in the business of developing software to create, support and run a crypto currency platform known as the Terra Blockchain Network. This network functioned as a decentralised digital ledger for transactions involving digital assets. TFL did not issue or sell digital tokens for value and was not a trading platform for digital currencies. All revenue that TFL earned was expected to be reinvested in the business and the Terra Blockchain ecosystem.[11]

46 Regrettably for TFL, its activities in the global crypto currency marketplace were conspicuous enough to be noticed by the United States Securities and Exchange Commission (the "SEC"). The SEC targeted TFL and determined that TFL was engaged in transactions involving its proprietary tokens and digital assets that violated the securities laws. The SEC pursued enforcement litigation against the company as detailed in the next paragraph, and the adverse effects of this litigation were what pushed TFL into bankruptcy.

47 In a complaint filed in the United States District Court for the Southern District of New York (the "District Court"), the SEC alleged that TFL and its

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[11] First affidavit of John S. Dubel dated 26 March 2024 ("First affidavit of JSD") at paras 10–12.

founder, Kwon Do Hyeong ("Mr. Kwon") sold digital assets to the public in transactions characterised by the SEC as the sale of unregistered securities in violation of the US Securities Act of 1933 and the US Exchange Act of 1934.[12]

48 The gravamen of the complaint was that TFL and Mr. Kwon had used the Terra Blockchain Network to engage in the unlawful offer and sale of these unregistered securities and securities-based swaps.[13] The claims made in the enforcement litigation constituted an existential threat to TFL's business model.

49 Although the SEC's allegations were vigorously controverted, eventually these claims presented insurmountable challenges to TFL's survival due to two materially adverse developments that occurred as the litigation unfolded.

50 The first major setback for TFL was the grant of partial summary judgment against the company by the District Court on 28 December 2023.[14] That judgment led promptly to the decision by TFL to file a voluntary petition for Chapter 11 relief in the Bankruptcy Court on 21 January 2024.[15] The Chapter 11 case gave TFL the protection of the automatic stay while allowing it to defend itself and continue its battle with the SEC.

51 Initially, the stated aim of the bankruptcy was to challenge the legal grounds for the grant of the summary judgment at the appellate court level and to maintain TFL's ordinary course of business operations. It was during this early "business as usual" phase of the Chapter 11 case that the SICC was asked

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12 First affidavit of JSD at para 17.

13 First affidavit of JSD at para 17.

14 First affidavit of JSD at para 18.

15 Applicant's written submissions dated 20 May 2024 at paras 14–19.

to grant recognition of the Chapter 11 proceedings under provisions of the SG Model Law. As stated above (at [2]), the proceeding in the Bankruptcy Court was recognised as a foreign non-main proceeding under the SG Model Law on 30 May 2024 in OA 5.

52 The second major setback in the litigation with the SEC turned out to be a mortal wound from which recovery was not possible. While the bankruptcy case was pending, on 5 April 2024, a jury in the District Court rendered a verdict in favour of the SEC and against TFL in the crushing amount of close to USD 4.5 billion based on securities fraud violations.[16] It was a huge win for the SEC and, for TFL, amounted to a devastating loss of "bet the company" litigation.

53 As a result of this jury verdict, TFL in an instant became hopelessly insolvent. The pragmatic commercial consequence of this grim financial reality was the urgent need to utilise the tools of Chapter 11 to address the judgment held by its largest creditor, the SEC, and at the same time accommodate the reasonable needs of other interested parties within a feasible and confirmable structure set forth in the Chapter 11 Plan. This need for a commercial solution became the backdrop for negotiations leading to a settlement agreement between the SEC and TFL that, in turn, became a critical building block for the Chapter 11 Plan.

54 As explained below, TFL succeeded in proposing a plan supported by all creditor classes to wind down its business in a manner calculated to maximise creditor recoveries despite the disproportionately large claim of the SEC. By agreement with the SEC, the multibillion-dollar claim from the jury award was

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16 First affidavit of Thong Kum Keen Benjamin dated 13 November 2024 ("First affidavit of TKKB") at exhibit "TKKB-1".

subordinated to the claims of other creditors. The next section of this decision outlines key terms of TFL's second amended plan of liquidation *viz*. the Chapter 11 Plan.

TFL's Chapter 11 Plan

55 The Chapter 11 Plan is typical of liquidation plans proposed under Chapter 11 and was based on a process of negotiation and compromises between a debtor-enterprise and various classes of its creditors. All relevant parties were represented by sophisticated and experienced professional advisors.

56 Adequate information needed to assess the treatment proposed under the Chapter 11 Plan was drafted and contained in a disclosure statement approved by the Bankruptcy Court and distributed to all parties impacted by the Chapter 11 Plan. The entire process, including the entry of the Confirmation Order, occurred under the supervision of a well-respected Bankruptcy Court judge with deep restructuring expertise.

57 Importantly, the Chapter 11 Plan had the support of all creditor constituencies and was endorsed by the SEC and the Official Committee of Unsecured Creditors appointed by the Office of the United States Trustee to represent the interests of all unsecured creditors.[17]

58 The Chapter 11 Plan was accepted by the requisite voting percentages in each class of impaired creditors that voted on the plan, and the Bankruptcy Court found in entering the Confirmation Order that all statutory requirements for confirmation had been satisfied.[18]

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17 Applicant's written submissions dated 7 January 2025 at para 39.

18 First affidavit of TKKB at paras 39–43.

59 In short, the process that was followed in TFL's Chapter 11 proceedings, from start to finish, complied with applicable law and followed proper procedures of notice and an opportunity to be heard.

60 That strict adherence to due process of law was a factor that weighed heavily in favour of the recognition that was granted at the hearing on SUM 57 and a consideration that this Court well understood from prior judicial experience on the federal bench in the United States Bankruptcy Court for the Southern District of New York. The Court, thus, had the advantage of having had long experience with how Chapter 11 works in practice and the importance placed on procedural and substantive fairness.

61 The trajectory followed by the Chapter 11 Plan and its approval by the Bankruptcy Court have demonstrated a core strength of the Chapter 11 regime. Parties impacted by the financial misfortunes of a debtor's business are free to engage with each other and the presiding bankruptcy court in a statutorily mandated process committed to both rehabilitation of the distressed business and the protection of creditors' rights in accordance with statutory priorities. Since the adoption of Title 11 of the United States Code (the "Bankruptcy Code") in 1978, the system has an enviable track record of success and has been recognised all over the world for being fair, flexible and effective.

Structure of the Chapter 11 Plan and adequate protection

62 The Bankruptcy Code's commitment to protecting the rights of creditors assures adequate protection to creditors and satisfies a requirement for recognition pursuant to Art 22(1) of the SG Model Law. The General Division of the High Court previously scrutinised and determined the fairness of the plan process in an earlier recent case involving Chapter 11, Re *Tantleff, Alan* [2023] 3 SLR 250 ("*Tantleff*").

63 In *Tantleff*, relief was granted to a foreign representative who sought recognition of a confirmed plan of reorganisation. There the Court agreed that the processes applicable to the Chapter 11 case had been fair and that relevant stakeholders were adequately protected. That is equally true in relation to the Chapter 11 Plan.

64 The process followed by the Bankruptcy Court leading to confirmation of the Chapter 11 Plan for TFL is comparable to what the Court considered and evaluated in *Tantleff*. As outlined in the following paragraphs, all creditors have been classified and treated appropriately in a manner that respected and protected separate legal entitlements.

65 The Chapter 11 Plan was structured to provide for an orderly liquidation of the assets of TFL and its British Virgin Islands subsidiary, Terraform Labs Limited (collectively, the "Debtors") and for implementation of a value-maximising consensual arrangement between the Debtors and the SEC that resolved the SEC's claims and provided for recoveries to the Debtors' creditors, including investors in TFL's digital currencies.

66 The key structural elements of the Chapter 11 Plan are as follows:[19]

(a) A liquidating wind down trust governed by a Wind Down Trust Agreement was created under Cayman law (the "Wind Down Trust");

(b) Debtors' assets and liabilities were transferred to this Wind Down Trust on October 1, 2024 (the effective date of the Chapter 11 Plan). All claims covered by the plan are to be liquidated, resolved, and paid by the Wind Down Trust;

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19 First affidavit of TKKB at para 22.

(c) An experienced restructuring professional from the US was appointed as the plan administrator and granted the authority to direct the trustee of the Wind Down Trust and effectuate the wind down, reconcile claims, and make distributions to holders of allowed claims, subject to oversight by an advisory board;

(d) A reserve was established to cover the funding for this wind down process; and

(e) Claims were placed in ten separate classes to respect different rights and priorities of creditors and to implement the settlement reached with the SEC.

67 Classes Three to Six of the Chapter 11 Plan are of particular interest. Class Three consists of the holders of the allowed secured claims of the Beltran Parties. Class Four covers the holders of general unsecured claims that share in a pool allocated for unsecured creditors. Parties that are to share in a so-called "Crypto Loss Claims Pool" to be funded by TFL and Mr. Kwon are in Class Five, and the SEC has been classified in Class Six.[20]

68 The classification scheme is notable for its placement of the SEC claim in a junior position thereby giving other interested parties the opportunity to realise a potential recovery notwithstanding the fact that their claims are otherwise dwarfed by the judgment in favour of the SEC.

69 The Beltran Parties have also been granted a preferred status in Class Three with allowed secured claims that may be freely pursued in Singapore. This demonstrates that the rights of the Beltran Parties have been recognised

[20] Applicant's written submissions dated 7 January 2025 at paras 19–27.

under the Bankruptcy Code and protected by the Bankruptcy Court. In practical terms, these claims were allowed to pass through the bankruptcy case without altering the legal or equitable rights of the Beltran Parties who are entitled to their day in court in Singapore and to whatever rights they may have with respect to the Singapore Escrow as determined by the Court in OA 3.

70 Accordingly, when viewed as a whole, the Chapter 11 Plan reveals a creative and beneficial response to a jury verdict that otherwise would have wiped out recoveries for investors and users of TFL's blockchain platform. The Chapter 11 Plan unquestionably was in the best interest of all affected parties, adding strong contextual support to the conclusion that the requested reliefs were appropriate under the circumstances. The following sub-section of this decision addresses principles of modified universalism and relevant authorities relating to the grant of reliefs in SUM 57.

Principles of modified universalism are embedded within the SG Model Law

71 The SG Model Law is adapted from text produced by UNCITRAL Working Group V and reflects years of work and a multitude of compromises as delegates from many jurisdictions and legal traditions balanced their territorial interests (adherence to local procedural and substantive law) with the aims of universality (the aspiration to override territorial distinctions to achieve greater uniformity, predictability and efficiency).

72 The SG Model Law facilitates cross-border insolvencies by providing a uniform choice of law rule in which no single body of substantive law applies to all insolvencies (that idealistic aim is often referred to as "universalism") and instead formulates uniform rules and procedures of cross-border cooperation that defer on a case by case basis to a single country's substantive law ("modified universalism") to control the disposition of insolvency proceedings

for a company with operations, assets or relevant stakeholders in more than one country.

73 In the US, the UNCITRAL Model Law on Cross-Border Insolvency was enacted in 2005 as Chapter 15 of the Bankruptcy Code ("Chapter 15"). It has proven itself to be effective and has worked remarkably well since its adoption, spawning many clarifying bankruptcy court and appellate cases in the roughly two decades since it came into effect.

74 Chapter 15 has been employed repeatedly to recognise foreign proceedings, stay domestic actions that might interfere with the aims of such foreign proceedings, order the repatriation of assets for distribution to foreign creditors and provide appropriate relief and additional assistance upon request in the form of granting recognition to foreign restructurings and insolvency related judgments entered by foreign tribunals: see, *eg*, In re *Agrokor d.d.* 591 B.R. 163 (Bankr. S.D.N.Y. 2018), all in deference to courts in other jurisdictions that are presiding over the foreign proceedings.

75 The UNCITRAL Model Law is built around four conceptual themes that play an important role in cases where multiple jurisdictions have ties to the business operations, assets or creditors of an enterprise that is the subject of a liquidation or restructuring. These are: (a) access by a foreign representative to the courts of those jurisdictions that have adopted the law, (b) recognition in those jurisdictions of foreign proceedings as either main (where the jurisdiction constitutes the COMI) or non-main (assuming the presence of non-transitory business activity can be shown as was the case for TFL), (c) the ability to seek and obtain judicial relief and (d) authorising cooperation and coordination between courts to facilitate orderly case administration.

76 There are two stages to recognition. First, an initial stage when an application for recognition of a foreign proceeding as either main or non-main is considered and approved. In the first stage, the foreign insolvency case itself is recognised. The second stage occurs after (or, in certain instances, in conjunction with) recognition of the foreign proceeding and may involve a more particularised recognition and enforcement of specific orders emanating from the foreign proceeding in order to provide needed judicial relief and assistance.

77 The first stage occurred in relation to TFL when its Chapter 11 proceeding in the Bankruptcy Court was recognised as a non-main foreign proceeding on 30 May 2024. The second stage occurred on 28 January 2025 at the hearing described in this decision and involved the grant of discretionary appropriate relief under the authority of Art 21 of the SG Model Law. As noted in *Tantleff* (at [78]), a liberal approach to the grant of appropriate relief is followed by courts in Singapore, an approach that looks with favour to the case law on this topic from the US.

78 Section 1521(*a*) of the Bankruptcy Code is analogous to Art 21 of the SG Model Law and authorises the grant of "any appropriate relief … to effectuate the purpose of [Chapter 15]". As interpreted by bankruptcy courts in the US, the discretion in granting appropriate relief is exceedingly broad. As Judge Martin Glenn had observed in In re *Avanti Communications Group* 582 B.R. 603 (Bankr. S.D.N.Y., 2018) ("*Avanti*") (at 612), in deciding whether to issue orders to enforce foreign court orders under either section 1507 or section 1521(*a*) of the Bankruptcy Code, "courts are guided by principles of comity and cooperation with foreign courts" (see *Avanti* at 616).

79 Bankruptcy judges in Chapter 15 cases routinely grant recognition of orders confirming schemes of arrangement or restructurings from other

jurisdictions, whether they be in main cases or non-main cases, under the provisions of section 1521 of the Bankruptcy Code. Judge Glenn has described such recognition as "commonplace" in relation to English schemes of arrangement (see *Avanti* at 606).

80 Courts in Singapore are similarly inclined to enforce foreign court orders in appropriate circumstances. While *Tantleff* has been cited for the general proposition that the Singapore courts take a liberal approach to recognition, it should be noted that *Tantleff* granted recognition under the narrower standard in Art 21(1)(*g*) of the SG Model Law. As counsel for TFL had argued, Re *PT Garuda Indonesia (Persero) Tbk and another matter* [2024] 3 SLR 254 ("*Garuda*") is the leading authority that supports recognition under the *chapeau* of Art 21(1) of the SG Model Law (*ie*, under the limb of "any appropriate relief").

81 In *Garuda*, the Court considered the issue of the proper basis for recognising and enforcing foreign court orders, such as the Jakarta Commercial Court order recognising and enforcing the restructuring plan under the PKPU in that case. The SICC (without citing *Avanti*) agreed with the approach adopted in the US jurisprudence supporting the view that the broad language in the preamble or *chapeau* of Art 21(1) of the SG Model Law affords great flexibility in granting appropriate relief. The language of Art 21(1) states clearly that "[u]pon recognition of a foreign proceeding, whether a foreign main or a foreign non-main proceeding … the Court may, at the request of the foreign representative, grant any appropriate relief …" (at [143]–[151]). Thus, relief is broadly available under the *chapeau* of Art 21(1) of the SG Model Law.

82 The ability for the Court in its discretion to grant any appropriate relief is expansive and open-ended. The provision allows for relief to be fashioned

and formulated based on the demonstrated needs of each case although the specific form of that relief necessarily will vary. Some relief is likely to be standard, such as the formal recognition of an order of a foreign tribunal approving a scheme of arrangement or a restructuring plan, but other relief may need to be custom-tailored to adapt to the needs of a particular business.

83 The point is that Art 21(1) of the SG Model Law, read liberally, permits the Court to be guided by principles of comity and a spirit of cooperation with foreign courts.

84 In respect of the request for appropriate reliefs made by TFL in SUM 57, this Court granted the reliefs without hesitation for the reasons outlined in this decision. For convenience, these reliefs as set forth in the order dated 28 January 2025 are repeated below in the immediately following paragraphs:

> 1. The plan contained in the Second Amended Chapter 11 Plan of Liquidation of Terraform Labs Pte. Ltd. And Terraform Labs Limited dated 18 September 2024 (as amended, modified, or supplemented) ("Plan") and the Findings of Fact, Conclusions of Law, and Order Confirming Second Amended Chapter 11 Plan of Liquidation of Terraform Labs Pte. Ltd. and Terraform Labs Limited dated 20 September 2024 ("Confirmation Order") made by the United States Bankruptcy Court approving the Plan is recognized.
>
> 2. The Claimant is to administer and realise all or any part of the Claimant's property and assets located in Singapore in accordance with the Plan and Confirmation Order.
>
> 3. The Claimant is to take all other actions as may be necessary or appropriate to effectuate, implement and consummate the Plan and Confirmation Order.
>
> 4. No actions or proceedings concerning the Claimant's property, rights, obligations or liabilities (save for the proceeding in SIC/OA 3/2024) in respect of all claims that have been compromised under the Plan shall be commenced or continued against the Claimant.

> 5. The Claimant and any person affected by this order be and are hereby granted liberty to apply for orders and directions arising from the interpretation or implementation of this order.

Conclusion

85 For the reasons set forth in this decision, the Court granted the above reliefs under Art 21(1) of the SG Model Law. All reliefs requested by TFL and granted by the Court in SUM 57 were appropriate, fully consistent with the purposes of the SG Model Law and reasonably calculated to effectuate, implement and consummate the Chapter 11 Plan and the Confirmation Order in Singapore.

James Michael Peck
International Judge

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