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

[2025] SGHC 191

Originating Application No 142 of 2023 (Summons No 1789 of 2025)

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 Schedule 3 of the Insolvency, Restructuring and Dissolution Act 2018

And

In the matter of Article 15 of the UNCITRAL Model Law on Cross-Border Insolvency

(1) Blackstone Asia Real Estate Partners Limited (In Liquidation)
(2) Angela Barkhouse
Joint Liquidator of Blackstone Asia Real Estate Partners Limited (In Liquidation)
(3) Toni Shukla
Joint Liquidator of Blackstone Asia Real Estate Partners Limited (in Liquidation)

… *Applicants*

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And

Standard Chartered Bank
(Singapore) Limited

… *Non-party*

Originating Application No 533 of 2022 (Summons No 810 of 2025)

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 Schedule 3 of the Insolvency, Restructuring and Dissolution Act (Act 40 of 2018)

And

In the matter of Article 15 of the UNCITRAL Model Law on Cross-Border Insolvency

(1) Brazen Sky Limited (In Liquidation)
(2) Angela Barkhouse
Joint Liquidator of Brazen Sky Limited (In Liquidation)
(3) Toni Shukla
Joint Liquidator of Brazen Sky Limited (In Liquidation)

… *Applicants*

And

(1) BSI Bank Limited (In Liquidation)
(2) Yak Yew Chee
(3) Seah Mei Ying (formerly known as) Seah Yew Foong Yvonne
(4) Jowie Yeo (formerly known as Yeo Jiawei)
(5) Raj Sriram
(6) Hans Peter Brunner

… *Non-parties*

JUDGMENT

[Insolvency Law — Cross-border insolvency]

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Re Blackstone Asia Real Estate Partners Ltd (In Liquidation) and others (Standard Chartered Bank (Singapore) Ltd, non-party) and another matter

[2025] SGHC 191

General Division of the High Court — Originating Application No 142 of 2023 (Summons No 1789 of 2025) and Originating Application No 533 of 2022 (Summons No 810 of 2025)
Aidan Xu @ Aedit Abdullah J
20, 22 August 2025

24 September 2025 Judgment reserved.

Aidan Xu @ Aedit Abdullah J:

1 In these two cases, the applicants sought to establish standing to pursue avoidance claims against two banks, as well as the employees of one of the banks, in respect of transactions that had occurred before the coming into force of the United Nations Commission on International Trade Law, UNCITRAL Model Law on Cross-Border Insolvency (1997) ("UNCITRAL Model Law") in Singapore. The applicants' pursuit ran up against Art 23(9) of the UNCITRAL Model Law as adopted in Singapore by way of s 252 and the Third Schedule of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") ("Model Law" or "Singapore Model Law"), which removes the standing given to a foreign representative of a recognised foreign proceeding, in respect of transactions entered into before the coming into force of the Model Law in Singapore. These two cases were heard separately, but a single judgment

is issued since the legal issues are similar and similar arguments were made, and the parties are represented by the same firms, if not the same lawyers.

2 While I, and at least one of my colleagues, had previously allowed similar orders in the past, these were not argued for at length and were in any event unopposed on this particular issue. Having considered the matter in the light of full arguments, I have concluded that the applications should be dismissed.

Background

HC/OA 142/2023 (HC/SUM 1789/2025)

3 The applicant in HC/SUM 1789/2025 ("SUM 1789") is a company in liquidation, Blackstone Asia Real Estate Partners Limited, and its foreign representatives, seeking standing to pursue avoidance claims under ss 238 and 239 of the IRDA in respect of payments in an account maintained with the respondent bank, Standard Chartered Bank (Singapore) Limited ("SCB"). It is alleged that these transactions, which occurred before the commencement of the Singapore Model Law, involved substantial fraud.

HC/OA 533/2022 (HC/SUM 810/2025)

4 In HC/SUM 810/2025 ("SUM 810"), Brazen Sky Limited ("Brazen Sky"), a company also in liquidation, and its foreign representatives similarly seek standing to pursue avoidance claims occurring before the commencement of the Singapore Model Law. The action is to be pursued against BSI Bank Limited ("BSI") and some of its employees ("Bankers").

5 Of relevance to SUM 810 is another set of proceedings – HC/OC 314/2024 ("OC 314") – brought by Brazen Sky and its parent company,

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1Malaysia Development Berhad, against BSI and the Bankers for claims of dishonest assistance of breaches of fiduciary duty or trust arising out of the same transactions that are the subject of the avoidance claims.[1]

6 The written arguments went into the substantive merits of the application for standing, but the court directed that at this stage only, the issue of standing should be addressed by the parties.

Summary of arguments of the applicants

7 The applicants argue that the court has broad powers under Art 21(1)(*g*) of the Singapore Model Law to grant additional relief, and this would include giving standing to commence claims for fraudulent or wrongful trading before the commencement of the Singapore Model Law.[2] Article 23(9) does not limit the court's powers under Art 21(1)(*g*).[3] This interpretation is supported by the plain language of Art 23(9) and the purposes for which the Singapore Model Law was enacted, namely, to avoid duplication of proceedings. Furthermore, the courts would take a modified universalist approach, giving assistance in the pursuit of claims. The banks' position curtails the court's discretion and creates an unwarranted distinction between local and foreign liquidation, giving impunity to wrongdoers. Requiring local proceedings to be instituted wastes time and costs.[4] Foreign jurisprudence in the US and UK do not assist.[5]

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1 Affidavit of Tony Shukla in OA 533 at paras 5, 11 and 13.

2 Applicant's Written Submissions ("AWS") in OA 142 at paras 16–17; AWS in OA 533 at para 16.

3 AWS in OA 142 at para 23; AWS in OA 533 at para 23.

4 AWS in OA 142 at paras 29–34; AWS in OA 533 at paras 27–28.

5 AWS in OA 142 at para 38.

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Summary of arguments of the respondents

8 In SUM 1789, SCB argues that Art 23(9) of the Model Law should be given its ordinary meaning.[6] Article 23(9) would thereby bar the proceedings as it limits the application of Art 23(1) only to transactions occurring after the commencement of the Singapore Model Law.[7] As Art 23(9) is not present in the UNCITRAL Model Law, the specific intention of inserting Art 23(9) into the Singapore Model Law must be to restrict Art 23(1) from applying retroactively.[8] Parliament could not have been intended in that event to allow Art 21(1)(*g*) to allow for separate application for commencement of such claims.[9] This is supported by existing commentary to Art 23(9).[10] Furthermore, the intention in respect of Art 23(1) was not to create any new substantive rights for foreign representatives.[11] Additionally, even if Art 23(9) is ambiguous, the common law presumption against the retrospective application of statues should be applied.[12] This interpretation of Art 23(9) is broadly harmonious with other Model Law jurisdictions, namely the UK and the US. The UK Cross-Border Insolvency Regulations 2006 (2006 No 1030) ("CBIR") contains a similar provision in its own Art 23(9). In the US, Title 11 USC §101 (2005) specifies an effective date that prevents retroactive application.[13]

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6 SCB's Written Submissions ("WS") in OA 142 at para 27.

7 SCB's WS in OA 142 at para 29.

8 SCB's WS in OA 142 at para 39.

9 SCB's WS in OA 142 at paras 40–41.

10 SCB's WS in OA 142 at para 42.

11 SCB's WS in OA 142 at paras 44–45.

12 SCB's WS in OA 142 at para 47.

13 SCB's WS in OA 142 at paras 51–56.

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9 In SUM 810, BSI and the Bankers argue that the application should be dismissed. Much like SCB, BSI argues that Art 23(9) of the Model Law bars the proceedings as they relate to transactions which occurred before the Singapore Model Law's entry into force.[14] BSI also refers to limitation proceedings, which are ongoing separately in OC 314. It characterises SUM 810 as an attempt to get around the possible time bars.[15] The Bankers make similar arguments to BSI regarding Art 23(9)[16] and indicated in oral arguments that they adopt the same position. Separately, the Bankers argue that the avoidance actions intended to be pursued overlap with OC 314. As OC 314 is still live, the applicants should not be allowed to pursue a parallel set of proceedings.[17]

The decision

10 The applications turn on the proper interpretation of Art 23(9) in the Singapore Model Law. This requires applying the approach laid down in *Tan Cheng Bock v Attorney-General* [2017] 2 SLR 850 ("*Tan Cheng Bock*").

11 I am satisfied that on a proper interpretation of Art 23(9) of the Model Law, the applications should be dismissed. The foreign representatives in these cases have no standing to pursue avoidance actions against the respondents as they concerned transactions entered into before the commencement of the Singapore Model Law through the IRDA, and any such standing cannot be given by the court.

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14 BSI's WS in OA 533 at paras 24–25 and 31–36.

15 BSI's WS in OA 533 at paras 10–12.

16 Yak Yew Chee & Seah Mei Ying's WS in OA 533 at para 16; Raj Sriram's WS in OA 533 at paras 16–17; Hans Peter Brunner's WS in OA 533 at para 14.

17 Yak Yew Chee & Seah Mei Ying's WS in OA 533 at paras 20–22; Raj Sriram's WS in OA 533 at paras 18–24; Hans Peter Brunner's WS in OA 533 at para 22.

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The legal framework governing interpretation

12 The following three-step framework on statutory interpretation was laid down in *Tan Cheng Bock* at [37]:

(a) first, ascertain the possible interpretations of the provision, given its text and its context within the statute;

(b) second, determine the legislative purpose of the statute; and

(c) third, compare the possible interpretations of the text against the purpose of the statute, preferring an interpretation which furthers the purpose.

13 SCB had also, referring to the case of *Ascentra Holdings, Inc (in official liquidation) and others v SPGK Pte Ltd* [2023] 2 SLR 421 ("*Ascentra Holdings*"), suggested a framework for interpretation of the Model Law covering both the construction of the ordinary meaning, the intention of Parliament and the UNCITRAL drafts, harmonious reading with other jurisdictions, and practical concerns.[18] While this is a fair summary of the approach in *Ascentra Holdings*, what differs in the present case is that Art 23(9) is not taken from the UNCITRAL Model Law. There is no question of harmonious reading, as a substantial departure from the UNCITRAL base text was consciously made. Aside from the plain words of Art 23(9), Parliament's intention is the only relevant consideration.

[18] SCB's WS in OA 142 at para 21

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The possible interpretations of Art 23(9)

14 The competing interpretations by the two sides are:

(a) The applicants' contend that Art 23(9) of the Model Law must be read as subject to the mechanism under Art 21 allowing the court to grant a wide range of reliefs upon the recognition of a foreign proceeding.

(b) The banks argue that Art 23(9) of the Model Law is to be read plainly.

The text of Art 23(9)

15 The text of Art 23(9) of the Model Law points to the banks' reading. It reads:

> Nothing in paragraph 1 of this Article applies in respect of any preference given, floating charge created, alienation, assignment made or other transaction entered into before the date on which this Law comes into force.

Paragraph 1 grants standing to the foreign representative to pursue avoidance actions:

> Subject to paragraphs 6 and 9 of this Article, upon recognition of a foreign proceeding, the foreign representative has standing to make an application to the Court for an order under or in connection with sections 130, 205, 224, 225, 228, 229, 238, 239, 240 and 438 of this Act and section 131(1) of the Companies Act 1967.

16 Therefore, from a plain reading of Art 23(9), it would prohibit the applications in SUM 810 and SUM 1789 as they relate to transactions entered into before the commencement of the Singapore Model Law.

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The context of Art 23(9)

17 The context does not support the applicants' position. That context here would include the other articles and provisions in the Singapore Model Law. These provisions do not point to any departure from the plain words of Art 23(9) of the Model Law.

18 The applicants argue that Art 21(1)(*g*) of the Model Law gives the court expansive discretionary powers to grant additional relief. In so doing, they point to the wording of Art 21(1*)*(*g*), which states that the applicants may apply for "any additional relief that may be available to a Singapore insolvency officeholder". It is argued that this is a very broad power in order to protect the property of the debtor or interests of the creditors, citing *Re Tantleff, Alan* [2023] 3 SLR 250 at [68], *Re Quoine Pte Ltd* [2025] 3 SLR 1536 at [59]–[61] and *Re Rooftop Group International Pte Ltd and another* [2020] 4 SLR 680 at [26]. According to the applicants, this expansive power in Art 21(1)(*g*) extends to controlling Art 23(9), and is not excluded by the latter in any way. They also argue that similar orders had been previously granted by this court, citing *Re Zetta Jet Pte Ltd* [2019] 4 SLR 1343 ("*Zetta Jet*") and a number of unreported decisions.[19]

19 I could not accept this argument. Article 21(1)(*g*) of the Model Law does not assist the applicants. However wide it may appear, it must be read subject to the other articles of the Model Law, including Art 23(9). Firstly. nothing in the wording of Arts 21(1)(*g*) or 23(9) would elevate the former over the latter, or modify the latter in any way. Secondly, there is nothing either in any other part of the statute, or the Singapore Model Law, that would modify the plain

[19] AWS in OA 142 at paras 15–19.

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reading of Art 23(9). Finally, cases such as *Zetta Jet* are of no assistance to the applicants. While I had allowed a similar order in that case, the order was uncontested and not the subject of full arguments. The same can be said of the other unreported decisions relied on by the applicants.

20 The applicants additionally argue that Art 23(9) itself does not restrict the discretion in Art 21(1)(g), and only expressly disapplies Art 23(1). The applicants argue that if Parliament had intended otherwise, it would have legislated that Art 23(9) is to apply to the Model Law as a whole, and would have expressly stated restrictions or constraints as in Art 17(1), which is subject to Art 6, or Art 23(1), which refers to Arts 23(6) and (9).[20]

21 Certainly, the methods of restriction enumerated by the applicants have been used in the Model Law and the IRDA, but aside from such methods, it is entirely within Parliament's power to restrict through the words of the article itself without making explicit reference to other provisions. Article 23(9) does this. It states expressly (above at [15]) that what is in paragraph (1) does not apply to any charge, or other transaction entered into before the commencement of the implementation of the Model Law in Singapore. The fact that paragraph (9) only makes reference to paragraph (1) and not any of the other provisions is understandable: paragraph (1) gives the foreign representative the standing to make various anti-avoidance applications under the IRDA. What paragraph (1) gives, paragraph (9) takes away in a defined situation. There is no need for paragraph (9) to refer to any other provision to take effect.

22 Moreover, I agree with the banks that the context of Art 23(6) of the Model Law suggests that Parliament did not intend to allow for foreign

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[20] AWS in OA 142 at paras 23 and 28–29.

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representatives to apply to court for relief from the bar in Art 23(9). The banks argue that if Parliament intended to allow the court, despite Art 23(9) to grant foreign representatives standing to pursue avoidance actions in respect of transactions entered into before the entry into force of the Model Law, it would have stated so in Art 23(9) itself.[21] In oral arguments, both noted that this was in fact done in respect of Art 23(6).

23 This is not to say that Parliament must legislate in a particular way to effect carve-outs to its restrictions. However, Parliament's express provision in Art 23(6) allowing parties to seek leave for Art 23 applications despite concurrent Singapore proceedings, though Art 21(1)(*g*) is wide enough to cover such applications, suggests the Art 23 restrictions were not intended to be subject to Art 21(1)(*g*).

24 The applicants make the other argument that the context shows that where Parliament intended to restrict the broad powers under Art 21 to 23 of the Model Law, language to that effect would have been inserted. They say that this is demonstrated by Art 22(1), which specifies expressly that the powers under Art 21 are subject to the requirement that the interest of creditors and other interested persons are adequately protected.[22] However, such express circumscription and cross-reference is understandable given the role of Art 22 vis-à-vis Art 21. Article 21 of the Model Law grants powers; Art 22 creates a brake or limit.

25 Another contextual point going against the applicants is that Art 23 in the UNCITRAL Model Law consists of only 2 paragraphs, dealing with the

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21 BSI's WS at para 35.

22 AWS in OA 142 at para 30.

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foreign representative's standing to initiate avoidance actions and similar proceedings, and that the court should be satisfied in respect of foreign non-main proceedings that the assets should be administered abroad. The Singapore implementation goes into much more detail and specification, covered in 9 paragraphs. It is clear therefore that Art 23 of the Singapore Model Law departs substantially from the UNCITRAL base and must be interpreted with that in mind.

The legislative purpose of the Model Law

26 The purpose and objective of the Singapore Model Law in the IRDA is indeed, as argued by the applicants, the promotion of more effective and efficient cross-border restructuring and liquidation. The banks do not deny this. But contrary to the applicants' arguments, this purpose and objective does not point to the interpretation of Art 23(9) of the Model Law that they argue for. IRDA implements the Model Law subject to limitations that are not necessarily contained in other versions of the Model Law.

27 The applicants argue that their interpretation furthers the general purpose of the Model Law enshrined in the preamble to the Singapore implementation, *ie*, to promote the fair and efficient administration of cross-border insolvencies, and the protection and maximisation of the debtor's property.[23] Furthermore, necessary relief for the orderly and fair conduct of cross-border insolvency should be available, as enumerated in the *UNCITRAL Model Law on Cross-Border Insolvency with Guide to Enactment and Interpretation*, UN Sales No E.14/V.2 (2014) ("Enactment Guide")at para 35.[24]

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[23] AWS in OA 142 at para 31.

[24] AWS in OA 142 at para 32.

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28 The banks, in turn, rely on the specific purpose of Art 23(9) of the Model Law, considering the legislative intent of Parliament in particular. Parliament had specifically included Art 23(9) to prohibit Art 23(1)'s application to transactions entered into prior to the Singapore Model Law's entry into force. It thereby could not have intended to allow foreign representatives the ability to circumvent Art 23(9) by separately applying to court for standing under the catch-all provision in Art 21(1)(*g*).[25]

The purpose of the implementation of the Model Law

29 What matters is not the object of the UNCITRAL Model Law, but rather the object of the Singapore implementation by way of the IRDA. That object is to provide a regime for the recognition and assistance of foreign insolvencies, with the aim of facilitating efficient and fair cross-border restructuring and insolvency proceedings, using the UNCITRAL Model Law as a basis but with some departure.

30 While I accept that (as the applicants argue) the Singapore Model Law has the broad purpose of promoting efficient insolvency proceedings across borders as intended by UNCITRAL, that purpose is clearly subject to modification or delineation with the Singapore context. The UNCITRAL Model Law framework allows for this (see Enactment Guide at para 25): some jurisdictions have introduced requirements of reciprocity, and some, including ours, have introduced different language on public policy (see *Re PT Garuda Indonesia (Persero) Tbk and another matter* [2024] 3 SLR 254 at [82]). As I have alluded to above (at [25]), Article 23(9) of the Singapore Model Law is not present in the UNCITRAL Model Law. The UNCITRAL materials thus

[25] SCB's WS in OA 142 at paras 37–42; BSI's WS in OA 533 at paras 34–36.

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cannot guide or influence the interpretation of Art 23(9). While one would tend towards a harmonious and consistent interpretation across jurisdictions, the Singapore Courts must give effect to the text as implemented in the Singapore Model Law.

31 The applicants' arguments about purpose are very broad. They argue that Parliament intended that Art 23(9) of the Model Law disapplies automatic granting of standing under Art 23(1), but allows for such standing to be granted on application under Art 21(1)(*g*).[26]

32 The short answer to this is that nothing of that sort has been specified expressly in the legislation. The plain language of both Arts 23(9) and 21 of the Model Law point against this purpose being encapsulated in these provisions. Article 23(9) does not state that it operates to only displace automatic assistance. Neither does Art 23(9) or any part of Art 21 refer to any interaction between them, giving rise to a framework for an exemption or permission being granted despite the express wording of Art 23(9). On the contrary, a lot must be read into the provisions to create the framework argued for by the applicants. I could not see any basis for the purpose ascribed by the applicants.

Evidence of the legislative purpose in Singapore

33 Nothing much more can be derived in Singapore, beyond the plain words. There is unfortunately nothing in the parliamentary debates nor in any other materials, including the *Report of the Insolvency Law Review Committee* (2013) and the *Report of the Committee to Strengthen Singapore as an International Centre for Debt Restructuring* (2016), that would shed light on what was intended by Art 23(9) of the Model Law beyond its express words.

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[26] AWS in OA 142 at para 23; AWS in OA 533 at para 29.

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34 There is academic commentary in the form of Harold Foo & Beverly Wee, *Annotated Guide to the Singapore Insolvency Legislation (Corporate Insolvency)* (Academy Publishing, 2023) ("Annotated Guide"). The specific commentary to Art 23(9) of the Model Law in the Annotated Guide (at para 14.221) is as follows:

> **Article 23(9).** This transitional provision prevents a foreign representative from challenging transactions entered into prior to the commencement of the Singapore Model Law. When any transactions were entered into prior to the enactment of the Model Law, such transactions would be challengeable only if Singapore insolvency proceedings had been commenced. This transitional provision ensures that parties' expectations are not undermined retrospectively.

35 The banks rely on this commentary as support for their position that Parliament's specific intention in including Art 23(9) of the Model Law was to prohibit standing from being granted to foreign representatives to bring proceedings in respect of transactions entered into prior to the Singapore Model Law coming into force. The commentary in the Annotated Guide adds some exposition to Art 23(9), namely, that it was meant to ensure that parties' expectations are not undermined retrospectively. While this is not conclusive of the issue, in my view, what it does indicate is perhaps that the plain words of Art 23(9) should be clear on their own.

Conclusion

36 A plain reading of Art 23(9) of the Model Law suggests that it operates to bar foreign representatives from bringing avoidance claims relating to transactions entered before the Singapore Model Law's entry into force. Neither the context of the Model Law, nor the legislative purpose of the implementation of Art 23(9) suggest otherwise.

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37 The applicants can really only point to a lack of explicit restrictions in Art 23(9) of the Model Law as their justification for their interpretation, while a lot must be read into the provisions to create the framework that they argue for. I am hence satisfied that on a proper interpretation of Art 23(9) of the Model Law, the applications should be dismissed.

Other arguments

38 Finally, I deal with some other arguments raised by both sides that fall outside of the *Tan Cheng Bock* framework.

Common law

39 The applicants argue that given that it was and remains open for the liquidators to pursue the claims through parallel proceedings in Singapore, it does not follow that the banks were or should be entitled under Art 23(9) of the Model Law to any legitimate expectations of impunity for conduct taking place prior to the Model Law coming into force.[27] The reference to legitimate expectations appears to be a reference to the exposition in the Annotated Guide that Art 23(9) protects parties' expectations from being undermined retrospectively.

40 The ability to pursue parallel proceedings does not affect the expectation against retrospective avoidance actions that is created by Art 23(9) of the Model Law. The article prohibits recognition and assistance of foreign insolvency proceedings under the Model Law from extending to such retrospective actions, but says nothing about the consequences that may follow from the institution of

[27] AWS in OA 533 at paras 27–28.

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local parallel proceedings: those are distinct from the foreign insolvency proceedings.

Retrospectivity

41 The applicants also spent some time arguing that their position did not involve retrospective application of the law. Given my conclusions, it is not necessary for me to deal with this argument.

Common law presumption against retrospective application of statutes

42 The banks argue that, in any case, the court should apply the common law presumption against the retrospective application of statutes, as enumerated by the Court of Appeal in *ABU v Comptroller of Income Tax* [2015] 2 SLR 420 at [73] and [76].[28]

43 Given my conclusions above, it is not necessary for me to address this argument.

Foreign cases

44 SCB argues that its interpretation of Art 23(9) of the Model Law is broadly harmonious with other Model Law jurisdictions. It raises the UK CBIR, which contains a similar provision in its own Art 23(9), as well as the US Title 11 USC §101 (2005), which specifies an effective date that prevents retroactive application.[29]

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[28] SCB's WS in OA 142 at para 47; BSI's WS in OC 533 at paras 38–44.

[29] SCB's WS in OA 142 at paras 51–54.

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45 The applicants argue that the US enactment of both Arts 21 and 23 of the UNCITRAL Model Law is not *in pari materia* with the Singapore Model Law.[30] Therefore, the US enactment of the UNCITRAL Model Law is irrelevant to the interpretation of Art 23(9) of the Singapore Model Law. I agree.

46 The applicants also refer to reports produced in the UK ahead of the adoption of the UNCITRAL Model Law by way of the CBIR, including the provision upon which our Art 23(9) appears to have been modelled, as well as case law developments.[31] The argument put forward is essentially a defensive one, against the proposition that the UK materials should guide our interpretation of Art 23(9). In the circumstances, given my approach to the interpretation here, which did not rely on the UK materials at all, I do not think it necessary to go into any extended discussion.

47 It suffices to note that the applicants argue the context of the UK adoption of the CBIR was different from the circumstances underlying the Singapore implementation of the Model Law. The UK consultation paper issued by the UK Insolvency Service stated that the purpose of its Art 23(9) equivalent was to prevent foreign representatives from setting aside transactions that took place before the coming into effect of the CBIR. The applicants say that this was because the English Courts at that time did not grant common law assistance to foreign representatives to pursue avoidance claims. The position in the UK changed through the decisions in *Cambridge Gas Transportation Corp v Official Committee of Unsecure Creditors of Navigator Holdings Plc and ors* [2007] 1 AC 508 ("*Cambridge Gas*"), a decision of the Privy Council,

30 AWS in OA 142 at paras 39–42.

31 AWS in OA 142 at paras 44–47.

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and *Phoenix Kapitaldienst GmbH, Re; Schmitt v Deichmann* [2013] Ch 61 ("*Re Phoenix*"), a High Court decision.[32]

48 The applicants have tried to trace the changes in the common law decisions to give a particular gloss on Art 23(9) as enacted there, namely that Art 23(9) was in response to an outdated understanding of the English common law. But in the absence of any actual express statement in the reports responding to and reiterating this gloss, the applicants' characterisation can only be described as speculative. Furthermore, as noted by the banks in oral arguments, the common law position in the UK retreated from the facilitative approach in *Re Phoenix* anyway.

49 In any event, I am reluctant to find that the context and discussion in the UK relevant to the determination in Singapore in the absence of an express reference in our materials to a stated position in the UK.

OC 314

50 Both BSI and the Bankers advance arguments regarding OC 314. BSI suggests that SUM 810 was brought as an attempt to get around potential time bars to the claims in OC 314.[33] The Bankers argue that SUM 810 is unnecessary as the potential avoidance claims overlap with the claims in OC 314.[34]

51 Given that I have dismissed SUM 810 on the basis that it is barred by Art 23(9) of the Model Law, it is not necessary for me to address these arguments.

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32 AWS in OA 142 at paras 44–45.

33 BSI's WS in OA 533 at paras 10–12.

34 Yak Yew Chee & Seah Mei Ying's WS in OA 533 at paras 20–22; Raj Sriram's WS in OA 533 at paras 18–24; Hans Peter Brunner's WS in OA 533 at para 22.

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Conclusion

52 For the reasons above, the applications are dismissed.

53 The outcome does leave the applicants without easy recourse against the respondents, in respect of apparently dubious transactions. There may be possible workarounds, which the applicants would be aware of. Additional expense will undoubtedly need to be incurred, and more time taken. It may be that the outcome here sits somewhat at odds with the ideals of the UNCITRAL Model Law. Nevertheless, the fact remains that our Parliament has, in the exercise of its powers, chosen to enact the Singapore Model Law with the limitation in Art 23(9). As such, that is the law here in Singapore. The court must give effect to what that law lays down.

Aidan Xu
Judge of the High Court

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Chia Voon Jiet, Sim Bing Wen, Jerald Tan, Valerie Wong Le Yee and Nicholas Tham Yong Liang (Drew & Napier LLC) for the non-party in HC/OA 142/2023;
Han Guangyuan Keith, Lye Yu Min and Ammani Mathivanan (Oon & Bazul LLP) for the applicants in HC/OA 533/2022;
Cavinder Bull SC, Kong Man Er (Jiang Man'Er), Tay Hong Zhi Gerald, Tang Xi-Rui Charlotte and Melvinder Singh s/o S Ajaib Singh (Drew & Napier LLC) for the first non-party in HC/OA 533/2022;
Quek Liuyong Uthai (Guo Liuyong Uthai) (I.R.B. Law LLP) for the second and third non-parties in HC/OA 533/2022;

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Tan Lin Yin Vickie (Cairnhill Law LLC) for the fourth non-party in HC/OA 533/2022;
Rajaram Muralli Raja and Tan Si Xin Adorabelle (Sreenivasan Chambers LLC) for the fifth non-party in HC/OA 533/2022;
Ng Lip Chih (Foo & Quek LLC) (instructed), Rezvana Fairouse d/o Mazhardeen and Tan Jinwen Mark (Chen Jinwen) (NLC Law Asia LLC) for the sixth non-party in HC/OA 533/2022.

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