

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

**[2026] SGHCR 19**

Originating Application No 945 of 2024 (Summons No 1656 of 2025)

Between

- (1) Paresh Tribhovan Jotangia (as the joint and several liquidator of Singapore JHC Co Pte Ltd (in liquidation))
- (2) Seshadri Rajagopalan (as the joint and several liquidator of Singapore JHC Co Pte Ltd (in liquidation))
- (3) Ho May Kee (as the joint and several liquidator of Singapore JHC Co Pte Ltd (in liquidation))
- (4) Singapore JHC Co Pte Ltd (in liquidation)

*... Applicants*

And

- (1) Singapore Commodities Group Co Pte Ltd
- (2) PKU Founder Commodities Group Co Ltd

*... Defendants*

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**FOUNDATIONS OF DECISION**

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[Civil Procedure — Stay of proceedings]

[Conflict of laws — Choice of jurisdiction — Choice of law — Natural forum]

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**Paresh Tribhovan Jotangia (as the joint and several liquidator of Singapore JHC Co Pte Ltd (in liquidation)) and others**

**v**

**Singapore Commodities Group Co Pte Ltd and another**

**[2026] SGHCR 19**

General Division of the High Court — Originating Application No 945 of 2024 (Summons No 1656 of 2025)

AR Gan Kam Yuin  
26 March 2026

12 June 2026

**AR Gan Kam Yuin:**

### **Introduction**

1 The Defendants applied in HC/SUM 1656/2025 (“**SUM 1656**”) to set aside the grant of permission for service out of jurisdiction of the originating process in Originating Application No 945 of 2024 (“**OA 945**”) on the 2<sup>nd</sup> Defendant and for a stay of OA 945 against both Defendants on the bases of *forum non conveniens* and/or case management reasons.

### **Parties and background facts**

2 The 4th Applicant is a company incorporated in Singapore (the “**Company**”) which was placed into compulsory liquidation by an order of the Court of Appeal on 8 September 2023. The 1st to 3rd Applicants were appointed

as the joint and several liquidators of the Company (the “**Liquidators**”) on 29 September 2023. I will refer to the 1st to 4th Applicants together as the “**Applicants**”.

3 The Company is a wholly owned subsidiary of Beijing JHC International Trade Co Ltd (in liquidation) (“**Beijing JHC**”), a company incorporated in the People’s Republic of China (“**PRC**”). Beijing JHC is wholly owned by Shanghai JHC International Trade Co Ltd (in liquidation), also incorporated in the PRC (“**Shanghai JHC**”).

4 The 1st Defendant is a company incorporated in Singapore (“**SG Commodities**”) and is a wholly owned subsidiary of the 2nd Defendant. The 2nd Defendant is a company incorporated in the PRC (“**PKUF Commodities**”).

5 Before early 2020, the Company, Beijing JHC, Shanghai JHC, SG Commodities, PKUF Commodities, and a company incorporated in Hong Kong called Founder Group (Hong Kong) Limited (in liquidation) (“**FGHK**”) were related companies within a group of companies known as the “**Founder Group**”. The Founder Group was owned by Peking University Founder Group Co Ltd, an ultimate holding company incorporated in the PRC.

6 FGHK was the creditor on whose application the Company was wound up. FGHK had also applied to wind up SG Commodities but that application was stayed pending arbitration. FGHK is the funder providing funding for the proceedings in OA 945.

7 SG Commodities owed the Company US\$26.02 million and the Company owed PKUF Commodities US\$41.27 million. By way of a Receivables and Debt Transfer Agreement dated 9 September 2021 (the

“**Agreement**”), the Company transferred the receivable of US\$26.02 million (the “**Receivable**”) to PKUF Commodities, with the net effect that the Company’s debt to PKUF Commodities was reduced by US\$26.02 million to US\$15.25 million.

8 PKUF Commodities filed a Proof of Debt (“**POD**”) in the Company’s liquidation estate for US\$15.25 million. FGHK filed a Proof of Debt in the Company’s liquidation estate for US\$47.4 million and S\$86,999.05 (this latter sum of S\$86,999.05 was for costs awarded in the winding-up proceedings between FGHK and the Company). One Mr Cai Ning (“**Mr Cai**”) purchased PKUF Commodities’ debt and filed a POD in the Company’s liquidation estate for CNY97,895,096.49 or approximately US\$15.25 million. The Court was not told who Mr Cai was and what prior relationship he had with any of the parties, if any. Apart from these PODs, Rajah & Tann Singapore LLP filed a POD arising from services rendered by it for acting for the Company in the winding-up proceedings between FGHK and the Company.

### **The proceedings in OA 945**

9 The Applicants started OA 945 against the Defendants on 16 September 2024 for the following relief:

- (a) An order that the Agreement be set aside by reason of it being a transaction at an undervalue pursuant to s 224 of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (“**IRDA**”), an unfair preference pursuant to s 225 of the IRDA and/or a transaction defrauding creditors pursuant to s 438 of the IRDA;

- (b) The Company, PKUF Commodities and SG Commodities be restored to their respective positions as if the Company had not entered into the Agreement;
- (c) SG Commodities pay the Receivable to the Company;
- (d) If the Receivable has been applied to property, that such property be vested in the Company; and
- (e) Further or other orders to restore the position as if the Company had not entered into the Agreement.

10 Service of the originating process in OA 945 was effected on SG Commodities on 17 September 2024. By way of HC/SUM 2786/2024 (“**SUM 2786**”), the Applicants obtained an order from the General Division of the High Court (the “**GDHC**”) that service of the originating process in OA 945 be effected on PKUF Commodities out of the jurisdiction (“**ORC SOOJ**”). The Court was not told when service was effected on PKUF Commodities but nothing turned on this.

11 SG Commodities and PKUF Commodities applied by way of the present application, SUM 1656, for the following relief:

- (a) That the order granting permission for service of the originating process of OA 945 out of jurisdiction on PKUF Commodities be set aside on grounds that the Court has no jurisdiction as against PKUF Commodities to hear the claim in OA 945 because Singapore is not the proper forum to hear the action;
- (b) In the alternative, that the whole action of OA 945 be stayed as against PKUF Commodities on grounds that the Court should not

exercise jurisdiction as against PKUF Commodities to hear the claim in OA 945 because Singapore is not the proper forum to hear the action;

(c) Further to paragraphs (a) or (b), that the whole action of OA 945 be stayed as against SG Commodities on grounds that the Court should not exercise jurisdiction over SG Commodities to hear the claim in OA 945 because Singapore is not the proper forum to hear the action; and

(d) In the alternative, that the whole action of OA 945 be stayed on case management grounds.

### **Issues to be determined**

12 The issues before me were:

(a) Whether the ORC SOOJ should be set aside for lack of jurisdiction (“**Issue 1**”)

(b) Whether PKUF Commodities had submitted to the jurisdiction of the Singapore Court (“**Issue 2**”)

(c) Whether PKUF Commodities had waived its right to challenge the jurisdiction of the Singapore Court (“**Issue 3**”)

(d) Whether Singapore was not the proper forum and/or was *forum non conveniens* (“**Issue 4**”)

(e) Whether a case management stay of OA 945 should be granted (“**Issue 5**”).

**Issue 1: Whether the ORC SOOJ should be set aside for lack of jurisdiction**

13 PKUF Commodities argued that the ORC SOOJ was obtained without proper basis.<sup>1</sup> The application for SOOJ was based on s 16(1) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) (the “**SCJA**”) read with the Rules of Court 2021 (the “**ROC 2021**”) and this was wrong because jurisdiction in respect of OA 945 should have been established under the IRDA.<sup>2</sup> In this connection, the Applicants should also have established that the relevant provisions of IRDA which applied to OA 945 had extraterritorial reach over a foreign company such as PKUF Commodities.<sup>3</sup>

14 Section 16 of the SCJA reads:

**Civil jurisdiction — general**

**16.**—(1) The General Division has jurisdiction to hear and try any action in personam where —

(a) the defendant is served with an originating claim or any other originating process —

(i) in Singapore in the manner prescribed by Rules of Court or Family Justice Rules; or

(ii) outside Singapore in the circumstances authorised by and in the manner prescribed by Rules of Court or Family Justice Rules; or

(b) the defendant submits to the jurisdiction of the General Division.

(2) Without limiting subsection (1), the General Division has such jurisdiction as is vested in it by any other written law.

15 Section 17(1)(c) of the SCJA reads:

**Civil jurisdiction — specific**

**17.**—(1) Without limiting section 16, the civil jurisdiction of the General Division includes —

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<sup>1</sup> Defendants’ submissions paras 15-44

<sup>2</sup> Defendants’ submissions paras 15-18

<sup>3</sup> Defendants’ submissions paras 18-20

(c) jurisdiction under any written law relating to bankruptcy or to companies;

16 The Applicants relied on *Allenger, Shiona (trustee-in-bankruptcy of the estate of Pelletier, Richard Paul Joseph) v Pelletier, Olga and another* [2020] SGHC 279 (“*Allenger*”), a decision of the High Court. The defendants in *Allenger* challenged the subject-matter jurisdiction and/or the *in personam* jurisdiction of the Singapore Court (*Allenger* at [19]). The Court in *Allenger* held that the High Court (which is now the GDHC) has unlimited subject-matter jurisdiction unless or until prohibited either by legislation or case law (*Allenger* at [51]–[55]).

17 The Applicants pointed out that the subject-matter jurisdiction of the Singapore Court was not in issue in OA 945. I accepted this and indeed PKUF Commodities also relied on s 17 of the SCJA as providing a specific ground for the Court’s jurisdiction in respect of matters relating to restructuring and insolvency<sup>4</sup>, albeit subject to its further argument about the extraterritorial reach of the provisions of the IRDA which were being invoked in OA 945. In accordance with the guidance in *Allenger* at [58]–[59], I accepted that s 17(1)(c) of the SCJA merely spells out with greater specificity that the GDHC has *specific* subject-matter jurisdiction under any written law such as the IRDA but that cannot circumscribe its *general* subject-matter jurisdiction under s 16 of the SCJA.

18 As explained in *Allenger* at [45]:

... To put it another way, s 16(1) SCJA *limits* the extent to which *in personam* jurisdiction can be exercised. Section 16(1) SCJA, however, places no such fetters on the exercise of subject-matter jurisdiction of the High Court ... That is not to say that subject-matter jurisdiction is completely divorced from *in*

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<sup>4</sup> Defendants’ submissions para 17

*personam* jurisdiction and the limits imposed thereupon. It must be borne in mind that in jurisdictional proceedings, both aspects of jurisdiction must be satisfied for the court to be seised of the matter. The two heads of jurisdiction are in this sense intertwined. Accordingly, notwithstanding this *absence of limitation* to subject-matter jurisdiction within s 16(1), the High Court’s subject-matter jurisdiction is only material and relevant *in so far as in personam jurisdiction exists*. They are *conjunctive* and *inseparable* requirements. One is expressly circumscribed in s 16(1), while the other is not. ... [emphasis in original]

19 I turned to consider the question of the *in personam* jurisdiction of the GDHC over PKUF Commodities.

### ***Lacunae in the IRDA***

20 PKUF Commodities pointed out that the Applicants had not cited s 10 of the IRDA when they made the application for SOOJ.<sup>5</sup> Section 10 reads:

#### **Where no specific procedure provided**

**10.—(1)** In any matter of practice or procedure for which no specific provision has been made by this Act, the procedure and practice for the time being in use or in force in the Supreme Court must, as nearly as possible, be followed and adopted.

(2) Where in respect of any matter of practice or procedure it is not possible to apply subsection (1), the Court may make such orders and give such directions as are likely to secure substantial justice between the parties.

21 PKUF Commodities noted that the supporting affidavit for SUM 2786 set out the Applicants’ basis for saying that the *in personam* jurisdiction of the GDHC could be established over PKUF Commodities under one or more of the provisions of paragraph 63 of the Supreme Court Practice Directions 2021 (the “**SCPD 2021**”).<sup>6</sup> Specifically, the supporting affidavit relied on (a) PKUF Commodities having property in Singapore (these being shares in SG Commodities), (b) OA 945 having been served in Singapore on SG

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<sup>5</sup> Defendants’ submissions para 25

<sup>6</sup> Defendants’ submissions para 15

Commodities and PKUF Commodities being a necessary and proper party to OA 945, (c) the Receivable being situated in Singapore, (d) the cause of action arising under the IRDA in Singapore, and (e) the fact that OA 945 concerns the effect and enforcement of provisions of the IRDA.

22 I did not agree that it was necessary for the Applicants to have expressly made the *anterior* point in the supporting affidavit for SUM 2786 that they were invoking the limbs under the SCPD 2021 as brought in by the ROC 2021 **because of** s 10 of the IRDA. It was sufficient for the supporting affidavit to have set out the factual basis for the respective provisions of paragraph 63 of the SCPD 2021 on which the Applicants were relying in SUM 2786.

23 Whether recourse could be had *in the first place* to the ROC 2021 and the SCPD 2021 to serve OA 945, which was a proceeding under the IRDA rather than under the ROC 2021, *because of* s 10 of the IRDA, was a matter of law and not a matter of fact which the supporting affidavit needed to address.

24 I considered whether the requirements of s 10(1) of the IRDA (“In any matter of practice or procedure for which no specific provision has been made by this Act, the procedure and practice for the time being in use or in force in the Supreme Court must, as nearly as possible, be followed and adopted”) were satisfied. First, was the ORC SOOJ a “matter of practice or procedure” and secondly, if so, did the IRDA make any “specific provision” for it? The answer to the first question would need to be a “yes” and the answer to the second question would need to be a “no” before the Applicants could have relied on the gateways under the ROC 2021 and the SCPD 2021 to serve OA 945 on PKUF Commodities OOJ.

25 PKUF Commodities argued that the question of whether the GDHC has jurisdiction over a foreign company for proceedings under the IRDA was a substantive matter, and not a matter of procedure or practice.<sup>7</sup> The Applicants on the other hand argued that service of process was a matter of procedure or practice.

26 I agreed with the Applicants. The question of how a claimant or applicant, having filed an originating process in the GDHC, should effect service of that originating process on the defendant was clearly a matter of procedure or practice as opposed to the substantive merits of the claims or disputes which were the subject matter of the action commenced by way of that originating process. Matters relating to service of process are procedural (*Humpuss Sea Transport Pte Ltd (in compulsory liquidation) v PT Humpuss Intermoda Transportasi TBK and another* [2015] SGHC 144 at [101]). PKUF Commodities' characterization of the question as being one of whether the GDHC has jurisdiction over a foreign company for proceedings under the IRDA conflated the *effect* of a properly-served originating process (*ie.* it would establish the *in personam* jurisdiction of the GDHC over a defendant) with the *manner* by which, and *location* at which, service could be effected, which are clearly matters of procedure or practice.

27 Properly characterised, in my view, there was a *lacuna* because the IRDA did not contain any provisions as to service of originating process such as OA 945 on a defendant OOJ.

28 PKUF Commodities relied on the High Court decision of *Re Rasmachayana Sulisty, ex parte The Hongkong and Shanghai Banking Corp*

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<sup>7</sup> Defendants' submissions para 25

*Ltd* [2004] SGHC 281 (“*Rasmachayana*”) and distinguished the later decision of the same Court in *Manharlal Trikamdass Mody and another v Sumikin Bussan International (HK) Limited* [2014] SGHC 123 (“*Manharlal*”).<sup>8</sup>

29 *Rasmachayana* concerned s 11 of the Bankruptcy Act (Cap 20, 2000 Rev Ed) (the “BA”) which was the equivalent provision to s 10 of the IRDA. At [6], the Court explained:

Section 11(1) of the Bankruptcy Act (Cap 20, 2000 Rev Ed) (“BA”) should only be resorted to in instances where lacunae in procedural issues exist, *ie*, where *no specific provision* has been made. This is decidedly not such an instance, in light of the express and fairly comprehensive regime addressing the modalities for service enacted in the BR. ... There is a patent and critical difference between “*no specific provision*” which really means the absence of *any* relevant provision(s), as opposed to any perception of *incomplete* or *inadequate* provisions dealing with a particular aspect of procedure. The BR, while specifically stating that personal service of process is to be employed in serving bankruptcy petitions, has, in addition, stipulated in no uncertain terms how such service is to be *effected*. ... [emphasis in original]

30 This was to be contrasted with *Manharlal* where, after considering the decision in *Rasmachayana*, the Court observed (at [73]):

Returning to the facts of the present case, the issue then is whether there is “no specific provision” in the BA or the BR governing the service out of jurisdiction with regard to claims made under ss 76(1)(c) and 105 of the BA. At the outset, I note that the facts in the present case are rather different from that in *Re Rasmachayana Sulisty*. In the latter case, the issue was in relation to the service of *bankruptcy processes*, such as statutory demands and bankruptcy petitions. This can be contrasted with the present case where the issue concerns the OA (or its assignee) bringing claims under ss 76(1)(c) and 105 of the BA. [emphasis in original]

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<sup>8</sup> Defendants’ submissions paras 26-31

31 After analysing the provisions in Part VI of the Bankruptcy Rules (Cap 20, R 1, 2006 Rev Ed) (the “**BR**”), the Court found at [75] that

Therefore, it can be seen that the bankruptcy procedures as dealt with in Part VI of the BR appear to be concerned with the proceedings brought in connection with the application and the making of the bankruptcy order *against the debtor*. On the other hand, the BA and BR appear to be silent on the commencement of proceedings *by the OA against creditors and other parties*. In this regard, it bears noting that the OA has the power under s 112(b) of the BA to institute and defend proceedings relating to the property of the bankrupt. Where those proceedings are brought, then unless there are specific provisions in the BA or the BR concerning such proceedings, it must follow that reference to the RC is permissible on the basis of s 11 of the BA. Therefore, I find that the Plaintiffs’ reliance on O 11 of the RC in connection with the application for leave to serve OS 601/2013 on the Defendant out of jurisdiction was proper due to the absence of any specific provision in the BA or the BR governing such a procedure. [emphasis in original]

32 In *Rasmachayana*, the statutory demands and bankruptcy petitions were not served on the debtors personally and the debtors argued that since the BR required personal service of both the statutory demands and the bankruptcy petitions, no proper service of process had been effected.<sup>9</sup> The Court noted that Rule 96 of the BR required the creditor to make reasonable attempts to serve the statutory demand personally on the debtor but stated that if the creditor was unable to do so, the creditor was permitted to serve the statutory demand by such other means as would be most effective in bringing the statutory demand to the debtor’s notice.<sup>10</sup> Rule 109 of the BR required the creditor to serve the bankruptcy petition personally on the debtor by delivering a sealed copy of the petition to the debtor but Rule 110 of the BR permitted the Court to order substituted service to be effected in such manner as the Court thinks fit.<sup>11</sup>

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<sup>9</sup> *Rasmachayana* at [2]-[4]

<sup>10</sup> *Rasmachayana* at [10]

<sup>11</sup> *Rasmachayana* at [12]-[13]

33 Given the existence of these explicit provisions in the BR, the Court found that Rules 96 and 109 of the BR were specific provisions in the BR which addressed the issue of service of the various bankruptcy processes.<sup>12</sup>

34 In *Manharlal*, the plaintiffs (who were bankrupt) filed an Originating Summons which sought to restrain the defendant from continuing with legal proceedings against them in India, including execution proceedings against a property in Mumbai.<sup>13</sup> The reliefs were sought based on s 76(1)(c) and s 105 of the BA. Section 76(1)(c) of the BA provided that on the making of a bankruptcy order, no creditor could proceed with any proceeding against a bankrupt in respect of a provable debt owed to that creditor except by leave of the Court. Section 105 of the BA provided that a creditor could not retain the benefit of any execution against a bankrupt unless the execution was completed before the date of the bankruptcy order.<sup>14</sup>

35 The Court noted that the BR contained no provisions dealing with the service of proceedings commenced under s 76(1)(c) or s 105 of the BA against a creditor of the bankrupt, which was what the Originating Summons in *Manharlal* was concerned with. Indeed, both the BA and the BR were silent on the commencement of proceedings *against* creditors and other parties and in such situations, unless there were specific provisions in the BA or the BR concerning such proceedings, the Court found that the plaintiffs were entitled to rely on the applicable provisions of the Rules of Court 2014 relating to service of the Originating Summons on the defendant.<sup>15</sup>

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<sup>12</sup> *Rasmachayana* at [5]

<sup>13</sup> *Manharlal* at [2] [23]

<sup>14</sup> *Manharlal* at [29]-[30]

<sup>15</sup> *Manharlal* at [70] [73]-[75]

36 I was of the view that the situation before me in OA 945 was similar to that in *Manharlal* rather than that in *Rasmachayana*. OA 945 sought to set aside the Agreement by reason of it being a transaction at an undervalue pursuant to s 224 of the IRDA, an unfair preference pursuant to s 225 of the IRDA and/or a transaction defrauding creditors pursuant to s 438 of the IRDA. There were no provisions in the IRDA which dealt with how any originating process which was brought to seek such relief should be served and PKUF Commodities did not draw my attention to any such provisions in the IRDA.

37 Accordingly, I concluded that s 10 of the IRDA had been satisfied and that the Applicants had correctly sought to serve the originating process OOJ on PKUF Commodities in accordance with the ROC 2021 and the SCPD 2021.

***Extraterritorial reach of the applicable IRDA provisions***

38 PKUF Commodities argued that in any event, the ORC SOOJ ought to be set aside because the Applicants failed to show – to the standard of a reasonable prospect of success – that the Singapore Court would apply the IRDA provisions which were invoked in OA 945, extraterritorially to PKUF Commodities which was a foreign defendant.<sup>16</sup>

39 This argument was founded on the decision of *In re Paramount Airways Ltd. (In Administration)* [1993] Ch. 223 (“*Paramount*”) where the English Court of Appeal upheld the order for service OOJ and observed that in exercising the discretion conferred on the Court by the legislative provisions which applied to the matter at hand, especially if a foreign element was involved, the Court would need to be satisfied that, in respect of the relief sought against him, the defendant

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<sup>16</sup> Defendants’ submissions paras 33-43

was “sufficiently connected with England for it to be just and proper to make the order against him despite the foreign element” (*Paramount* at p239H).

40 In tandem with this, the Defendants submitted that the question of the extraterritorial reach of legislation relating to restructuring and insolvency could not be assumed but would be determined as a matter of construction of the relevant provisions.<sup>17</sup> They relied on the decisions of *Beluga Chartering GmbH (in liquidation) and others v Beluga Projects (Singapore) Pte Ltd (in liquidation) and another* [2014] SGCA 14 (“*Beluga*”), *Re Pacific Andes Resources Development Ltd and other matters* [2016] SGHC 210 (“*Pacific Andes*”) and *Natixis, Singapore Branch v Seshadri Rojagopalan and others and other appeals* [2025] SGCA 29 (“*Natixis*”).

41 *Beluga* concerned the applicability of s 377 in Division 2 of Part XI of the Companies Act 1967 (Cap 50, 2006 Rev Ed) to foreign companies in liquidation. The Court of Appeal said at [48] that there is “a general statutory presumption against extraterritoriality” and disagreed with the High Court that Parliament must have intended that Division 2 of Part XI of the Companies Act 1967 (Cap 50, 2006 Rev Ed) would apply to all foreign companies.

42 The High Court in *Pacific Andes* noted at [18] that s 210(10) of the Companies Act 1967 (Cap 50, 2006 Rev Ed) on a scheme moratorium did not extend outside jurisdiction and also referred to the presumption that statutes are intended to operate territorially in the absence of language suggesting otherwise.

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<sup>17</sup> Defendants’ submissions paras 19-20

43 Finally, in *Natixis*, the Court of Appeal cautioned that “it is generally presumed that Parliament does not intend to regulate activity outside of Singapore” (at [47]).

44 In response, the Applicants pointed out that in *Paramount*, the provisions in the UK Rules of Court as to service OoJ were statutorily disapplied to insolvency proceedings.<sup>18</sup> It was in this context that the English Court of Appeal held that in deciding whether to grant leave to serve OoJ, the Court had to take into account the strength or weakness of the plaintiff’s claim in the proceedings. The plaintiff had to make out a sufficiently strong case to justify his being given leave and, where a foreign element is involved, one of the factors which the Court will consider is the apparent strength or weakness of the plaintiff’s claim that the defendant has a sufficient connection with England, in respect of the relief sought in the proceedings.<sup>19</sup>

45 I agreed with the Applicants. The situation in Singapore was different. I had found that the Applicants had correctly sought to serve the originating process OoJ on PKUF Commodities in accordance with the ROC 2021 and the SCPD 2021 and there was no need for the Applicants to show – to the standard of a reasonable prospect of success – that the Singapore Court would apply the IRDA provisions which were invoked in OA 945, extraterritorially to PKUF Commodities which was a foreign defendant.

46 In making the application to serve OA 945 OoJ on PKUF Commodities, the Applicants would have had to demonstrate, amongst other requirements, a serious question to be tried on the merits of the claim. I would accept that the Applicants would have had to address the extraterritoriality of the applicable

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<sup>18</sup> *Paramount* at p240H-241E

<sup>19</sup> *Paramount* at p241FG

IRDA provisions in that context including the appropriate statutory construction of those provisions.

47 The Applicants referred to *Allenger* at [72]–[74] where the Court discussed *Pacific Andes*. As mentioned at [42] above, this case concerned applications under s 210(10) of the Companies Act 1967 (Cap 50, 2006 Rev Ed) for moratoria against legal actions or proceedings brought by creditors in Singapore or elsewhere. The question arose as to whether the Court had powers under s 210(10) of the Companies Act 1967 (Cap 50, 2006 Rev Ed) to restrain the commencement or continuation of proceedings elsewhere by creditors who were otherwise within and subject to the jurisdiction of the Court.

48 As held in *Pacific Andes* (at [19]):

... The court has subject matter jurisdiction by reason of s 210 so long as the applicant is a ‘company’ within the definition provided in s 210(11). In exercising subject matter jurisdiction over the scheme, creditors who are within the jurisdiction or participating in the scheme and whose debts are legitimately subject to the scheme would be subject to the *in personam* jurisdiction of the court. The court, having subject matter jurisdiction over the scheme and *in personam* jurisdiction over these creditors, is then able to exercise its powers to restrain such creditors only within the limits of s 210(10). And, for the reasons expressed earlier, s 210(10) does not have the reach that the Applicants contend for.

49 In other words, the Court did possess subject-matter jurisdiction over the scheme proposed in *Pacific Andes*. It also had *in personam* jurisdiction over creditors who participated in the scheme, and whose debts were legitimately subject to the scheme. The only limiting factor was that s 210(10) of the Companies Act 1967 (Cap 50, 2006 Rev Ed) did not confer the power, or the extra-territorial jurisdiction, to restrain the commencement or continuation of proceedings elsewhere. This echoed the distinction between the authority of a

Court to hear a case (*ie*, jurisdiction) and the power of the Court to grant particular reliefs claimed (*Allenger* at [73]–[74]).

50 I took the view that once the Singapore Court had subject-matter jurisdiction over the issues in OA 945 (which it did) and *in personam* jurisdiction over PKUF Commodities (which again it did), there was no need for the Applicants to also show, to the standard of a reasonable prospect of success, that the Singapore Court would apply the relevant IRDA provisions extraterritorially to PKUF Commodities. Naturally, the Singapore Court would have to exercise its powers under the relevant IRDA provisions within the limits of those provisions, if and when OA 945 was heard on the merits. There was a serious question to be tried as to what those limits would be, and whether the provisions would, or would not, have the necessary extraterritorial reach such that the substantive orders which the Applicants sought in OA 945 could be made against a foreign defendant such as PKUF Commodities.

51 In conclusion, on Issue 1, I did not agree that the ORC SOOJ was obtained without proper basis and should be set aside. Specifically, I accepted that the application for SOOJ was correctly based on s 16(1) of the SCJA read with the ROC 2021 and the SCPD 2021 and there was no requirement for the Applicants to establish to the standard of a reasonable prospect of success that the relevant provisions of IRDA which applied to OA 945 had extraterritorial reach over a foreign company such as PKUF Commodities.

## **Issue 2: Whether PKUF Commodities had submitted to the jurisdiction of the Singapore Court**

52 The Applicants argued that PKUF Commodities had submitted to the jurisdiction of the Singapore Court by filing its POD for US\$15.25 million in the liquidation estate of the Company, relying on *Manharlal, Rubin and another*

*v Eurofinance SA and others* [2012] UKSC 46 (“*Rubin*”), *Stichting Shell Pensioenfonds v Kryss and another* [2014] UKPC 41 (“*Stichting Shell*”) and *Sapura Fabrication Sdn Bhd and others v GAS and another appeal* [2025] SGCA 13 (“*Sapura*”).<sup>20</sup>

53 In *Manharlal* at [123], the Court said that “the formal submission of a proof of debt by a foreign creditor is sufficient basis to allow the supervising court to make orders against that foreign creditor.” The Court referred to *Rubin* where the UK Supreme Court noted (at [165]):

In English law there is no doubt that orders may be made against a foreign creditor who proves in an English liquidation or bankruptcy on the footing that by proving the foreign creditor submits to the jurisdiction of the English court. ...

54 Of course, it should be noted that the UK Supreme Court referred at [165] to *Ex p Robertson; In re Morton* (1875) LR 20 Eq 733 (“*Ex p Robertson*”), in which the person resisting jurisdiction had not only filed a POD but also received a dividend.

55 The Privy Council, on appeal from the Court of Appeal of the British Virgin Islands in *Stichting*, also referred to *Ex p Robertson* and noted at [29]–[30] that the creditor had actually received a dividend. That being said, the Privy Council went on at [30] to refer to *Akers v Deputy Commissioner of Taxation* [2014] FCAFC 57 (“*Akers*”) where no dividend had been received, as well as to *Rubin*, and held at [30] that the formal submission of a POD would generally suffice for the court supervising the insolvency to make orders in matters connected with the insolvency against the creditor who has proved. I took guidance also from the Privy Council’s observations at [31] that:

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<sup>20</sup> Applicants’ submissions paras 14-18

... The question here is ... whether [Shell] has submitted to the jurisdiction of the court. A submission may consist in any procedural step consistent only with acceptance of the rules under which the court operates. These rules may expose the party submitting to consequences which extend well beyond the matters with which the relevant procedural step was concerned, as when the commencement of proceedings is followed by a counterclaim. In the present case the Defendant lodged a proof. It cannot make any difference to the character of that act whether the proof is subsequently admitted or a dividend paid, any more than it makes a difference to the submission implicit in beginning an ordinary action whether it ultimately succeeds. This result is neither unjust nor contrary to principle, for by submitting a proof the creditor obtains an immediate benefit consisting in the right to have his claim considered by the liquidator and ultimately by the court according to its merits and satisfied according to the rules of distribution if it is admitted. ...

56 Finally, there was the Court of Appeal decision of *Sapura* in which the respondent lodged a POD in Malaysia in what was termed the First Reorganization Proceeding. The Court of Appeal referred to the GDHC's holding that the respondent had thereby submitted to the jurisdiction of the Malaysian Court in relation to the subsequent Reorganization Proceedings (*Sapura* at [32]–[34]). The Judge in the GDHC had accepted that despite the submission to jurisdiction, the Judge would have carved out other disputes to be determined by arbitration (*Sapura* at [35]) because “a creditor’s submission of a proof for one claim does not *per se* preclude the creditor from taking proceedings outside the liquidation on another claim, so long as the proceedings were not meant to allow the creditor priority access to the debtor’s assets” (as per *Stichting* at [31]).

57 The appeal to the Court of Appeal centred on whether the carve-out should be granted (*Sapura* at [36]) but, at [51], the Court of Appeal agreed with the GDHC:

... that the respondent’s submission to the Malaysian Court’s jurisdiction in the First Reorganisation Proceeding persists to

the Third Reorganisation Proceeding. In our view, the Judge correctly prioritised substance over form when he held that the Second and Third Reorganisation Proceedings were, in substance, extensions of time to complete the proof of debt exercise given the fact that no fresh proof of debt exercise *at large* was required in respect of the subsequent Reorganisation Proceedings (at [80] of the Judgment ([3] *supra*)). [emphasis in original]

58 Whether the Court of Appeal’s view about the respondent’s submission to jurisdiction was *obiter dicta* (PKUF Commodities argued that it was) or not (the Applicants argued that it was not) because the parties informed the Court of Appeal, at the close of the hearing, that they had reached a settlement and later withdrew the appeal, nonetheless the Court of Appeal did go on to issue its judgment (*Sapura* at [5]) and it would be remiss of me not to pay due regard to it.

59 I also considered *Erste Group Bank AG v JSC 'VMZ Red October' and others* [2015] EWCA Civ 379, which was not cited to me by the parties, where the English Court of Appeal said at [51]:

The English law principle articulated in [*Rubin*], and recently affirmed in [*Stichting*], is that a foreign creditor submits to the jurisdiction of the court supervising a company's insolvency by proving in that insolvency. That, by itself, is sufficient without more (and irrespective of whether the proof has been accepted or a dividend has been received) to require the creditor to have all questions, of whatever kind, as against the debtor resolved within the insolvency as administered by the court of the jurisdiction of that insolvency. The rationale for the rule was first set out in *Ex p. Robertson; In re Morton* (1875) LR 20 Eq 733, at 737 -738. The latest summary of the law is to be found in paragraphs 29 *et seq* of [*Stichting*].

60 In contrast, PKUF Commodities relied on the views of Professor Adrian Briggs (Adrian Briggs, “Rubin and New Cap: Foreign Judgments and Insolvency”, speech at 2013 Jones Day Professorship of Commercial Law Lecture (10 April 2013)):

Rather unexpectedly, but now as clearly established by [*Rubin*], a creditor who makes a claim for payment out of an insolvent estate will be held to have submitted to the general (current and prospective) jurisdiction of the supervising court. The act of submission is done and the Rubicon is crossed, as it appears, by the creditor sending in a form, or maybe no more than a letter, to the liquidator, in which he says that he is owed money. Though the document by which he does so is not a writ, and is not sent to the court, and probably does not even mention a court, it amounts to a submission to a court in relation to claims which have neither been formulated nor served, in a court which has not really seen seised at all: [*Rubin*], at [165]-[167].

...

The English form by means of which a person who seeks to be added to the list of creditors is provided for by the Insolvency Rules 1986 (SI 1986/1925): the form is Form 4.25. This looks remarkably informal for a document which, when sent to a liquidator, amounts to submission by a creditor to the entire insolvency jurisdiction, including preference and repayment jurisdiction, of the court which is supervising him. Surely one would expect red capital letters and a red hand pointing to such grave consequences?

...

It has even led one of my colleagues in chambers to advise that you should never reply to letters from liquidators: it is safe to read them, but very dangerous to reply, for fear that this is taken as submission in the [*Rubin*] sense. It may be going a little far, but the advice is, at bottom, properly cautious.

61 Professor Briggs' views were considered by the Court in *Manharlal* at [121] where the Court said:

It bears noting that the decision of *Rubin v Eurofinance SA* has also been the subject of scrutiny by academic commentators. In fact, the holding that the formal submission of a proof of debt can be taken as a submission to that particular jurisdiction was severely criticised by Prof Adrian Briggs in a lecture delivered in Singapore on 21 November 2013 (see Adrian Briggs, "New Developments in Private International Law: A Busy 12 Months for the Supreme Court", lecture on private international law (21 November 2013)). The learned commentator went so far as to describe the conclusion as "astonishing". In brief, Prof Briggs was of the view that the mere submission of a proof of debt

cannot be treated as the unlimited submission to the jurisdiction of the supervising court. ...

62 The Privy Council, at [30]–[31] of *Stichting*, referred to the same commentary by Professor Briggs

... The same view was taken by the Supreme Court in *Rubin v Eurofinance SA* [2013] 1 AC 236. Lord Collins (with whom on this point the rest of the court agreed) held at paras 165, 167, citing *Ex p Robertson*, that there was:

“no doubt that orders may be made against a foreign creditor who proves in an English liquidation or bankruptcy on the footing that by proving the foreign creditor submits to the jurisdiction of the English court ... having chosen to submit to [Rubin]’s Australian insolvency proceeding, the syndicate should be taken to have submitted to the jurisdiction of the Australian court responsible for the supervision of that proceeding. It should not be allowed to benefit from the insolvency proceeding without the burden of complying with the orders made in that proceeding.”

It has been suggested by Professor Briggs in a recent lecture in Singapore (New Developments in Private International Law: A Busy 12 Months for the Supreme Court, 21 November 2013) that this conclusion was “astonishing” because no proof had been admitted and no dividend had been paid. Miss Newman QC, adopting this criticism, submitted that Lord Collins was wrong on this point. The Board is satisfied that his statement was correct. ...

63 It bore noting that despite having had their attention drawn to Professor Briggs’ criticisms, both the GDHC in *Manharlal* and the Privy Council in *Stichting* upheld the principle that if a foreign creditor submits his POD, that gives the supervising Court sufficient basis to make orders against that foreign creditor. It also bore noting that notwithstanding Professor Briggs’ criticism, his starting point was that it was “clearly established” that a creditor who makes a claim for payment out of an insolvent estate will be held to have submitted to the “general (current and prospective) jurisdiction of the supervising court”. As he said, the “act of submission is done” by the creditor’s sending of the POD to the liquidator.

64 In other words, Professor Briggs *acknowledged* that this was the prevailing position as a matter of law although he went on to criticise it. I did not feel that it was open to me to prefer Professor Briggs's views, no matter how trenchantly expressed, and come to a different conclusion on the law.

65 If it was suggested that the arguably simple or informal appearance of a POD form should mean that it could not carry grave consequences if submitted, I did not agree. A POD form is a documentary declaration made by a creditor which is intended to establish (or prove) the debt that the insolvent company owes to the creditor. Lodging a POD gives the creditor the right to have his debt adjudicated by the liquidator and, if accepted, to participate in any distribution out of the insolvent estate. If his POD is adjudicated and rejected by the liquidator, the creditor may take the liquidator to Court to challenge the adjudication (Rule 132 of the Insolvency, Restructuring and Dissolution (Corporate Insolvency and Restructuring) Rules 2020). By way of illustration, a creditor is not entitled to vote at the first creditors' meeting of a company in judicial management unless he has lodged his POD and the creditor's POD may be admitted in whole or in part for the purposes of voting before his debt is adjudicated (Rule 37 of the Insolvency, Restructuring and Dissolution (Judicial Management) Regulations 2020). Quite apart from submission to jurisdiction, the lodging of a POD can, and does, carry important consequences which may belie its appearance.

66 PKUF Commodities pointed out that by a letter to the Court dated 24 April 2025, which was written when SG Commodities and PKUF Commodities had just instructed their lawyers to act and sought an extension of time, they said:

Our clients also need time to take advice on and consider issues of proper service, jurisdiction, and the proper law governing the

dispute, as well as the procedural options available to them to compel witnesses relevant to the dispute which forms the subject matter of OA 945. In this regard, it appears at this stage that the most material and potentially contested facts are likely to concern (among other things) the state of mind and intentions of various PRC-based individuals.

...

For good order, our clients expressly reserve the right to challenge the jurisdiction of the Singapore Court (including as to proper service and law), and the making of this present request for the Extended Timelines is not a submission to the jurisdiction of the Court.

In other words, they said that the point as to jurisdiction had been live all along and the Liquidators did not respond to their letter to say that PKUF had, by filing its POD, already submitted to jurisdiction.

67 I did not agree with PKUF Commodities. The letter from its lawyers said it needed to be advised on, amongst other issues, jurisdiction, and reserved the right to challenge (amongst others) jurisdiction, and stated that the request for time was not a submission to jurisdiction. Certainly PKUF Commodities could be advised on the issue of jurisdiction and whether jurisdiction should be challenged, and such advice would have taken into account the submission of its POD and any other factors that the lawyers thought were relevant. It was not necessary for the Liquidators to respond to the letter to assert that PKUF Commodities had already submitted to jurisdiction. It might even have been inappropriate to do so since that was precisely one of the points which PKUF Commodities' newly-appointed lawyers wanted time to advise it on and, if PKUF Commodities did indeed decide to challenge jurisdiction, would have been an issue for the Court to decide rather than for the parties to litigate by correspondence.

68 PKUF Commodities pointed out that in the supporting affidavit for SUM 2786, the Applicants did not take the position that there was sufficient nexus to Singapore because of paragraph 63(3)(r) of the SCPD 2021 *ie.* that the claim was in respect of matters in which PKUF Commodities had submitted or agreed to submit to the jurisdiction of the Singapore Court. Instead, as mentioned at [21] above, the supporting affidavit relied on paragraphs 63(3)(a), (c), (i), (p) and (s) of the SCPD 2021.

69 I did not think this omission meant that the Applicants could not now argue that PKUF Commodities had submitted to jurisdiction by reason of the POD. If the lodging of the POD meant that there was a submission to jurisdiction, that would remain the position whether or not the Liquidators knew it when they sought the ORC SOOJ. Conversely, if the ORC SOOJ had been granted on the basis of something that was successfully challenged at the setting aside stage, that would also be the position even if the Liquidators had thought otherwise when they sought the ORC SOOJ.

70 As held in *Grains and Industrial Products Trading Pte Ltd and another v State Bank of India and others* [2019] SGHC 292 at [83]–[84],

... Accordingly, where there is valid basis for subjecting an out-of-jurisdiction defendant to jurisdiction, it should not be mandatory for a claimant (seeking to invoke new grounds) to start again. Instead, the court has discretion as to the order that will best serve the overriding objective: *NML Capital* at [75].

...

... in the absence of any finding that the plaintiff's conduct was an abuse of process, a new cause of action and/or an O 11 r 1 head of jurisdiction may be relied on by the plaintiff in a setting aside application. This is even if that new cause of action or O 11 r 1 head of jurisdiction was not relied upon in the *ex parte* application for service out of jurisdiction. ...

71 In conclusion, on Issue 2, I accepted that PKUF Commodities had submitted to the jurisdiction of the Singapore Court for the purposes of OA 945.

**Issue 3: Whether PKUF Commodities had waived its right to challenge the jurisdiction of the Singapore Court**

72 The Applicants argued that PKUF Commodities’ submission of its POD also amounted to a waiver of its right to mount a challenge on the basis of the Singapore Court being *forum non conveniens* for OA 945.<sup>21</sup>

73 The authorities which were cited to me in the context of Issue 2 did not involve applications for a stay on the ground of *forum non conveniens*. Specifically in the context of Issue 3, the Applicants relied on the ruling in *Reputation Administration Service Pte Ltd v Spamhaus Technology Ltd* [2021] SGCA 51 (“*Spamhaus*”) at [20(b)] that “[w]aiver is established where a party has taken a “step” that is incompatible with the position that the Singapore court *should not assume* jurisdiction over the matter.” (emphasis in original)

74 In *Spamhaus*, the plaintiff claimed commission which it said the defendant owed it under an agreement for services. The defendant sought to stay the suit on the basis that the agreement contained an exclusive jurisdiction clause (“EJC”) in favour of the Courts of England and Wales.

75 The Court of Appeal explained the distinction between the Court having jurisdiction over a case and the Court not assuming or not exercising jurisdiction over a case despite having jurisdiction (*Spamhaus* at [18]–[21]):

20 The tests for submission and waiver are similar:

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<sup>21</sup> Applicants’ submissions paras 20-22

(a) Submission is established where a party has taken a “step” that is incompatible with the position that the Singapore court does not *have* jurisdiction. This may be inferred through a “step that is ‘only necessary or only useful’ if: (a) any objection to the existence of the local court’s jurisdiction has been waived; or (b) no such objection has ever been entertained at all”: *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 at [43]; *Shanghai Turbo Enterprises Ltd v Liu Ming* [2019] 1 SLR 779 at [44].

(b) Waiver is established where a party has taken a “step” that is incompatible with the position that the Singapore court *should not assume* jurisdiction over the matter. That is, where such party takes a step demonstrating a clear intention to have the dispute determined by the Singapore court: *Wing Hak Man v Bio-Treat Technology Ltd* [2009] 1 SLR(R) 446 at [63] (“*Wing Hak Man*”). While *Wing Hak Man* involved a stay application premised on an arbitration clause, the observations therein are equally applicable to a jurisdiction clause, given that both clauses are contractual instruments that are given effect to pursuant to the principle of party autonomy.

21 In both inquiries, the step taken by a party must be clear and unequivocal. Each inquiry involves a question of fact to be determined in the circumstances of the particular case. Accordingly, a party could conceivably take a step that is a clear submission as well as a clear waiver of rights. It all turns on the factual matrix before the court. (emphasis in original)

76 During the course of the suit, amongst other steps, the defendant in *Spamhaus* filed a defence, contested the plaintiff’s application for summary judgment, and applied to strike out the statement of claim before filing the application to stay the suit on the basis of the EJC (*Spamhaus* at [12]–[13]). The Court of Appeal decided that on the facts of the case, the defendant had submitted to the Singapore Court’s jurisdiction and, in so doing, waived its right to rely on the EJC (*Spamhaus* at [17]).

77 Unlike the defendant in *Spamhaus*, PKUF Commodities was saying, in the context of Issue 3, that the Singapore Court should not exercise its jurisdiction over PKUF Commodities.

78 I was prepared to extend the logic in *Manharlal* and *Stichting* and accept the Applicants' argument that if the supervising court had sufficient basis to make orders against a foreign creditor because it had filed a POD in the liquidation, then surely the foreign creditor's filing of the POD should *also* amount to a waiver of a jurisdictional challenge (whether it was the existence of jurisdiction or the exercise of jurisdiction). If a foreign creditor was unwilling to accept the Singapore Court's jurisdiction in respect of its debt, there would be no reason for it to submit its POD in a liquidation that was supervised by the Singapore Court. And, having submitted its POD, it would seem arbitrary to draw a line and say that its submission to jurisdiction was limited to the existence of the Singapore Court's jurisdiction over it but did not extend to the exercise of the Singapore Court's jurisdiction over it. This would have decided Issue 3 in favour of the Applicants.

79 Nonetheless, absent any case authorities specifically dealing with the point and in case I was wrong, I also considered the merits of the Defendants' application to stay OA 945 under Issue 4 and Issue 5 below.

80 Before exploring Issue 4 and Issue 5, it seemed appropriate to consider the possibility that the Defendants sought to stay OA 945 because of an EJC in favour of the PRC. It was not entirely clear from the prayers in SUM 1656 that this was the basis, or one of the bases, of SUM 1656. However, in the supporting affidavit filed by Shi Liming for SUM 1656 at paragraphs 82-84, it was said that under PRC law, Article 5 of the Agreement was exclusive in that it would be a breach of the said clause for a party to attempt to resolve a dispute falling within the scope of that clause in any other forum apart from the PRC Court. This was reinforced in the Defendants' written submissions where paragraph 70 argued that the parties to the Agreement, including the Company, had intended for disputes relating to the Agreement to be resolved by the PRC Courts

applying PRC law, noted that PRC law and the PRC were the law and place of their usual business operations, and said that the parties' preference was crystallised in Article 5 of the Agreement.

81 Article 5 was titled "Governing Law and Dispute Resolution" and read as follows (the Agreement identified Party A as the Company and identified Party B as PKUF Commodities):

The validity, interpretation, performance and resolution of disputes of this Agreement shall be governed by the laws of the People's Republic of China (excluding Hong Kong, Macao and Taiwan). Any dispute arising out of the performance of this Agreement shall be resolved by both Parties through consultation; failing which, Party A may submit such dispute to the competent court in China where Party B is located.

82 The Applicants relied on the evidence of Mr Ronghua (Andy) Liao ("**Mr Liao**") whilst the Defendants put forward the evidence of Professor Xu Yang Guang ("**Professor Xu**"), their respective PRC law experts.

83 Professor Xu suggested that under PRC law the term "may" in Article 5, *ie*, in the phrase "Party A may submit such dispute to the competent court in China where Party B is located", was to be interpreted as "shall" and accordingly, Article 5 was intended to be exclusive in nature. Specifically, Professor Xu identified the Beijing Fourth Intermediate People's Court as the PRC Court which would have been designated under Article 5 because of, amongst others, PKUF Commodities' registered address and the amount in dispute in OA 945.<sup>22</sup>

84 Mr Liao disagreed as there were authorities that suggested that the use of the word "may" was merely permissive and not exclusive in nature, there was

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<sup>22</sup> Professor Xu's report paras 19-22, 15

no clear, exclusionary language, and Article 5 did not clearly identify the PRC Court that was said to have exclusive jurisdiction. Mr Liao suggested that Article 5 was no more than a non-exclusive, permissive submission to the PRC Courts.<sup>23</sup>

85 Quite apart from Article 5, both experts agreed that given PKUF Commodities' insolvent status, Article 21 of the Enterprise Bankruptcy Law of the PRC (the "EBL") would apply. Article 21 reads:

**Article 21.** Upon acceptance of a bankruptcy application by the People's Court, civil proceedings which relate to the debtor shall only be initiated in the People's Court that accepted the bankruptcy application.

86 Considering that the Beijing First Intermediate People's Court had accepted the bankruptcy liquidation case of PKUF Commodities, Professor Xu said that "Thus, aside from the Jurisdiction Clause in the Assignment Agreement, in light of bankruptcy and liquidation proceedings, my view is that the civil litigation relating to PKUF Commodities (whether PKUF Commodities is the plaintiff or the defendant) should still be subject to the jurisdiction of the Beijing First Intermediate People's Court".<sup>24</sup>

87 Mr Liao opined that Article 5 was overridden by the mandatory jurisdiction rules in Article 21 of the EBL once the PRC Court accepted PKUF Commodities' bankruptcy proceedings. However, Article 21 did not mandate that proceedings must be commenced in the PRC; rather, if a party chose to bring civil proceedings in the PRC during the applicable period, then Article 21 would exclude the jurisdiction of other PRC Courts. PRC law does not expressly

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<sup>23</sup> Mr Liao's report paras 15-23, 30-35

<sup>24</sup> Professor Xu's report paras 16-18, 31-36 at para 36

state that the EBL has extraterritorial effect or would exclude the jurisdiction of foreign courts.<sup>25</sup>

88 I accepted that Article 5 was not an EJC but was a non-exclusive jurisdiction clause in favour of the Beijing Fourth Intermediate People’s Court. As for the impact of Article 21 of the EBL, I was not persuaded that the EBL would have extraterritorial effect or exclude the jurisdiction of foreign courts such that all proceedings involving PKUF Commodities had to be brought in the PRC. But I accepted that Article 21 would override Article 5 such that any civil proceedings brought in the PRC during the applicable period had to be brought in the Beijing First Intermediate People’s Court which had accepted the bankruptcy liquidation case of PKUF Commodities.

89 In any event, I also formed the view that the disputes in OA 945 would not fall within the scope of Article 5.

90 To reiterate, Article 5 referred to any dispute “arising out of the performance of [the] Agreement”.

91 Professor Xu suggested that the words “arising out of the performance of [the] Agreement” were wide enough to include all types of disputes associated with the performance of the Agreement, including objections to the validity of the Agreement that were aimed at avoiding contractual performance. He opined that the word ‘performance’ in that context should be broadly interpreted and this was consistent with the fact that the parties envisaged that PRC law would govern all aspects of the Agreement and the disputes arising out of it.

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<sup>25</sup> Mr Liao’s report paras 24-28

92 He said that this interpretation would be consistent with the principles of contract interpretation as exemplified within the framework of PRC law and the judicial interpretations and precedents established by the Supreme People's Court. Since the parties had explicitly included a jurisdiction clause in the contract, it should have been their genuine intention to submit disputes to the PRC Courts for resolution and limiting the scope of Article 5 might not reflect the true intentions of the parties. He referred to Article 1 of the "Interpretation of Several Issues Concerning the Application of the General Provisions on Contracts of the Civil Code of the People's Republic of China" which stipulates: "If there are two or more interpretations of a contract clause that may affect the validity of the clause, the People's Court should choose the interpretation that upholds the validity of the clause."<sup>26</sup>

93 In response, the Applicants said that OA 945 was in essence a clawback action pursuant to ss 224, 225 and 438 of the IRDA. The Applicants did not seek to challenge the validity of the Agreement as such, but rather the underlying reasons for entry into the Agreement, including questions such as the consideration for the transaction, whether the Agreement was entered into in good faith, and whether the Agreement would benefit the Company. The disputes in OA 945 had nothing to do with whether the Agreement was entered into validly as a matter of PRC **contract** law.<sup>27</sup>

94 According to Mr Liao, on a proper construction of the language used in Article 5, Article 5 was confined to disputes arising "during the performance of the Agreement", and this would not extend to the kind of validity challenge that the Liquidators were making in OA 945. Rather, the Liquidators would argue that the Agreement was invalid and incapable of performance, or that the

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<sup>26</sup> Professor Xu's report paras 27-30

<sup>27</sup> Applicants' submissions para 30

Agreement was not effective or could not validly be performed, rather than a dispute arising in the course of performance in the sense envisaged by the language of Article 5. Based on an ordinary linguistic interpretation, questions of whether the Agreement has legal effect are conceptually prior to, and distinct from, questions that arise during performance.

95 Mr Liao went on to point out that the first sentence of Article 5 listed "validity" and "performance" as separate categories and the word "performance" used in the second sentence of Article 5 to refer to a dispute arising "during the performance of" the Agreement should not be interpreted to also include disputes about "validity". He added that in practice, where parties intend to capture all disputes related to a contract, including formation, validity, performance, termination and remedies, the usual formula is along the lines of "any dispute arising out of or in connection with this Agreement" as compared to using language limited to disputes arising "during the performance of the Agreement". Thus, the narrower wording employed in Article 5 is a strong indication that the parties did not intend every possible dispute, including validity, to fall within Article 5.

96 Mr Liao referred to a decision of the Supreme People's Court in the case (2017) Zui Gao Fa Min Xia Zhong No. 163 where it was decided that an arbitration clause which covered "disputes arising from the conclusion, performance and interpretation of the agreement" did not extend to an action seeking rescission of the contract.<sup>28</sup>

97 I preferred Mr Liao's reasoning and exposition. I also thought that Professor Xu's point about Article 1 of the "Interpretation of Several Issues

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<sup>28</sup> Mr Liao's report paras 38-43

Concerning the Application of the General Provisions on Contracts of the Civil Code of the People’s Republic of China” did not apply. Article 1 governed a situation where a Court had to choose between two or more interpretations of a contract clause that may affect the validity of the clause and required the Court to choose the interpretation that upholds the validity of the clause. Interpreting Article 5 to have a narrower scope (as Mr Liao contended) would still uphold the validity of Article 5 and so would not run afoul of Article 1.

98 Further, the Liquidators were not bound by Article 5. The Liquidators were not parties to the Agreement but were invoking ss 224, 225 and 438 of the IRDA to bring the clawback claims under OA 945.<sup>29</sup> Neither was SG Commodities a party to the Agreement and it would therefore not be bound by Article 5 either.

99 There would be a fragmentation of the dispute across multiple jurisdictions if OA 945 were stayed as against PKUF Commodities by reason of Article 5 of the Agreement. As the Court of Appeal noted in *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] SGCA 65 (“*Vinmar*”) (at [139]):

Finally, we briefly discuss two other issues. In our restatement of the law, we have not discussed a case where the grant of a stay would lead to the fragmentation of a dispute across multiple jurisdictions because the dispute involves multiple parties, some of whom are not parties to the jurisdiction clause. In such cases, the risk of duplicative proceedings, inconsistent findings and incentivising a rush to judgment may well establish strong cause to refuse a stay: see *Donohue* ([97] *supra*) at [27]. It is unnecessary for us to discuss this further, however, because this dispute only involved *Vinmar* and PTT, the parties to the EJC. It is sufficient for our immediate purposes to observe that the concern arising from such fragmentation of legal proceedings is legitimate and certainly one which merits

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<sup>29</sup> Applicants’ submissions paras 34-35

proper consideration with the benefit of submissions, should the issue arise in a subsequent case before us.

100 In conclusion, if SUM 1656 was an application for a stay of proceedings based on Article 5 as an EJC, the Defendants bore the burden of showing a “good arguable case” that an exclusive jurisdiction agreement existed and governed the dispute in question (*Vinmar* at [41]). For the reasons set out above, in my view the Defendants had not discharged this burden.

101 I then turned to Issue 4 and Issue 5.

**Issue 4: Whether Singapore was not the proper forum and/or was *forum non conveniens***

***Who bore the burden?***

102 The Defendants argued that since PKUF Commodities was the substantive defendant to OA 945 and was a foreign entity, the burden rested on the Applicants to show that Singapore was the *forum conveniens* / proper forum to resolve the dispute in OA 945.<sup>30</sup> The Applicants agreed that ordinarily, the Applicants would bear the burden of showing that Singapore was the proper forum given that PKUF Commodities had applied to set aside service on the basis that the Singapore Court has no jurisdiction. However, SG Commodities did not dispute that the Singapore Court has jurisdiction, and on the basis that PKUF Commodities had submitted to the Singapore Court’s jurisdiction, the Defendants would bear the burden of showing that OA 945 should be stayed because the PRC was the clearly or distinctly more appropriate forum.<sup>31</sup>

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<sup>30</sup> Defendants’ submissions para 46

<sup>31</sup> Applicants’ submissions para 41

103 All the parties relied on *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] SGCA 44 (“*Zoom*”) in support of their respective arguments. The Court of Appeal held in *Zoom* at [75] that:

... where a foreign defendant disputes the existence of the Singapore courts’ jurisdiction on the grounds that Singapore is not the proper forum (and thus, that one of the requirements for valid service out of jurisdiction (see [26] above) has not been satisfied), at the hearing of the foreign defendant’s jurisdictional challenge, the plaintiff retains the burden of showing that Singapore is the proper forum. ... However, that has no application where the Singapore courts undoubtedly have jurisdiction, whether as of right or because there has been a submission to jurisdiction or because there has been valid service of an originating process out of jurisdiction, and the question is whether a stay of proceedings on improper forum grounds ought to be ordered.

104 In light of my decisions under Issue 1 (paragraph 51 above) and Issue 2 (paragraph 71 above), and as SG Commodities did not dispute that the Singapore Court had jurisdiction over it, I accepted that the Defendants bore the burden of showing that OA 945 should be stayed in favour of the PRC.

105 The parties agreed that whether a stay for *forum non conveniens* should be granted turned on the application of the two-stage test in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] 1 A.C. 460 (“*Spiliada*”).

106 First, whether *prima facie*, there is some other available forum that is more appropriate for the case to be tried. It must also be shown that the alternate forum is an available forum in which the dispute may be tried. At this first stage, the Court considers the following connecting factors: (a) the personal connections of the parties and witnesses; (b) connections to relevant events and transactions; (c) the applicable law to the dispute; (d) the existence of proceedings elsewhere; and (e) the shape of the litigation. Secondly, if the Court concludes that there is *prima facie* a more appropriate alternative forum, the

Court will ordinarily grant a stay unless there are circumstances by reason of which justice requires that a stay should nonetheless not be granted.

***Stage one - the connecting factors***

107 The Applicants did not challenge that the PRC was an available forum in which the disputes under OA 945 may be tried (subject to their arguments about the relative unsuitability of the PRC Court<sup>32</sup> which I will deal with below).

*The personal connections of the parties and witnesses*

108 The Applicants pointed out that although PKUF Commodities is a company incorporated in the PRC, the Company and SG Commodities are Singapore companies. Insofar as any relevant witnesses are or were officers of the Company and/or SG Commodities, they would be under a duty to cooperate with the Liquidators (under s 243 of the IRDA), to participate in the insolvency affairs of the Company, and had/continue to have connections with these Singapore companies.<sup>33</sup>

109 Witnesses who may be resident in the PRC could travel to Singapore to give evidence before the Singapore Court or (if the Singapore Court were to allow testimony by video conferencing) they could give evidence by video conferencing from a location where such evidence was clearly not prohibited, or from the PRC. According to Mr Liao, PRC law does not prohibit the giving of evidence by video link where witnesses voluntarily give evidence.<sup>34</sup>

110 In response, the Defendants said that all the relevant actors were based in the PRC including PKUF Commodities, which was a party to the Agreement

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<sup>32</sup> Applicants' submissions paras 56-60

<sup>33</sup> Applicants' submissions paras 51-52

<sup>34</sup> Applicants' submissions para 53; Mr Liao's report paras 61-80

being impugned, and FGHK. More importantly, all the directors, management, and business teams of the relevant actors, including those of the Company and SG Commodities, were based in the PRC. Apart from the Company and SG Commodities being incorporated in Singapore, none of the people driving the activities had any meaningful connection to Singapore.<sup>35</sup>

111 The witnesses who could shed light on the circumstances in which the Agreement was entered into would be based in the PRC.<sup>36</sup> Although the Liquidators were based in Singapore, their first-hand knowledge would necessarily be limited to matters arising after their appointment as Liquidators and would be based on a review of the books and records available to them.

112 Professor Xu pointed out that Article 294 of the Civil Procedure Law of the PRC read with Article 3(1) of the Treaty on Judicial Assistance in Civil and Commercial Matters between the PRC and Singapore prohibits Singapore Courts from conducting investigations or collecting evidence directly within the territory of the PRC without the prior permission and judicial assistance of certain authorities. According to Professor Xu, this prohibition would extend to testimony through video conferencing. It appeared that there was a risk that testimony by video conferencing by PRC witnesses in the PRC for Singapore proceedings was not allowed under PRC law.<sup>37</sup>

113 As for compellability, it could not be gainsaid that the Singapore Court could not compel the attendance of PRC witnesses before the Singapore Court if they remained in the PRC. It was equally clear, and Mr Liao accepted, that

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<sup>35</sup> Defendants' submissions para 54

<sup>36</sup> Defendants' submissions paras 55-56

<sup>37</sup> Professor Xu's report paras 50-57

PRC law imposed on PRC citizens and residents a duty to testify as witnesses before a court in civil proceedings.<sup>38</sup>

114 The Defendants further pointed out that some of the key individuals were no longer employed by the Founder Group companies which are in liquidation and it would be difficult to count on their co-operation.<sup>39</sup>

115 The Defendants said that key documents were likely to be with other PRC-based companies in the Founder Group, which had all been declared bankrupt and were managed by various PRC Courts and liquidators, and they pointed out that it would be difficult to retrieve those documents without the cooperation and approval of the respective PRC liquidators and supervising PRC Courts.<sup>40</sup>

116 Mr Liao highlighted that even in the PRC, the PRC Courts do not have the power to issue a subpoena or an order to compel production of documents if a witness refuses to do so.<sup>41</sup> The Defendants did not say this was inaccurate and this therefore diminished, *to that extent*, the availability of witness testimony and document production as a connecting factor in favour of the PRC. Nonetheless, I agreed with the Defendants, and Mr Liao accepted, that PRC citizens and entities would be under *some* duty to cooperate with the Court's processes<sup>42</sup> whereas that could not at all be said of *any* duty to the Singapore Court.

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<sup>38</sup> Mr Liao's report para 52

<sup>39</sup> Defendants' submissions para 63

<sup>40</sup> Defendants' submissions paras 65-66

<sup>41</sup> Mr Liao's report paras 44-60; paras 81-86

<sup>42</sup> Defendants' submissions para 66; Mr Liao's report para 86

117 All the witnesses, apart from the Liquidators, would be native Mandarin speakers who would testify in Mandarin. The need for translation would significantly impact the time and costs of their testimony. Furthermore, the relevant documents were likely to be in Mandarin and would all need to be translated if the trial proceeded in Singapore. The Defendants argued that translation at this scale, for the entire proceeding, in respect of every witness and all the documents including technical ones such as financial statements, may introduce inaccuracies that could affect the proper evaluation of the evidence.<sup>43</sup>

118 I did not agree with the Defendants' argument about inaccuracies. That risk was inherent whenever translation was required and the risk did not necessarily increase just because there was a greater volume of testimony and material requiring translation. Indeed, it was arguable that the converse was true and the risk of inaccuracy would decrease because the greater volume of material undergoing translation would provide better context and familiarity. Leaving that aside, however, I agreed that convenience for the witnesses and compellability of the witnesses were, overall, connecting factors to the PRC.

119 All that being said, it was important to bear in mind that OA 945 was brought as an Originating Application and none of the parties had suggested that they would take steps to convert the Originating Application into an Originating Claim. The parties would be aware that Originating Applications are generally decided on affidavit evidence and oral evidence is by default not required. The Defendants would still face some of the difficulties already highlighted above, such as the need for translation of any affidavits from Mandarin into English, but there would generally be no need to produce the witnesses before the

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<sup>43</sup> Defendants' submissions paras 59, 67

Singapore Court for their testimony to be admitted and for them to be cross-examined. Seen in this light, the Defendants' concerns about convenience, compellability and access to documents would certainly be diminished and the Defendants' arguments about the difficulties of obtaining witness testimony from persons resident in the PRC should also be given less weight.

120 Ultimately, if any witness testimony (oral or written) or document could not be obtained and properly adduced in the Singapore Court if the Singapore Court were hearing OA 945, the party bearing the burden of proof would be unable to discharge the burden. During the hearing, I asked counsel what would happen if the PRC witnesses did not testify and documents could not be obtained from the PRC. The Applicants said they would accept that and made the point that OA 945 had been commenced on the basis of documents and with the benefit of legal advice. The Defendants on the other hand said that they would be severely disadvantaged because the real actors were in the PRC.

121 It was not possible for me to come to any firm view as to whether the Applicants or the Defendants would be more significantly impacted (and, therefore, clearly more prejudiced) if witness testimony (oral or written) and documents could not be obtained from the PRC. It would not necessarily be the case that **all** the witnesses and **all** the documents could not be obtained. It could well be that **some** witnesses and **some** documents, material to **one or more** different issues in OA 945, could be obtained. Also, the **weight** of the missing evidence would also not necessarily be evenly distributed. In short, I did not accept that the Defendants would **necessarily** be the more disadvantaged party as compared to the Applicants.

122 Overall, I accepted that the personal connections of the parties and the witnesses, as well as the documents, pointed to the PRC but not as strongly as

the Defendants had argued, especially taking into account that OA 945 should be decided on affidavit evidence without requiring oral testimony.

*Connections to relevant events and transactions*

123 It was not disputed that the impugned Agreement had been negotiated, signed and sealed in the PRC by persons resident in the PRC in respect of companies that were managed and operated out of the PRC.<sup>44</sup> However, it was equally beyond question that these were historical facts and that in OA 945 the Agreement was being impugned by the Liquidators who had been appointed by a Singapore Court and were invoking the IRDA which is a piece of Singapore legislation.

124 I viewed this as a factor which was marginally weighted in favour of the PRC.

*The applicable law to the dispute*

125 The claims brought by the Liquidators in OA 945 were specifically anchored in s 224 (that the Agreement was a transaction at an undervalue), s 225 (that the Agreement amounted to an unfair preference) and/or s 438 (that the Agreement was a transaction defrauding creditors) of the IRDA.

126 The High Court held in *Lavrentiadis, Lavrentios v Dextra Partners Pte Ltd (in liquidation) and another matter* [2023] SGHC 131 at [12(b)] that such statutory claims were causes of action that arose post-insolvency and were vested in the Liquidators.

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<sup>44</sup> Defendants' submissions para 73

127 In my view, the applicable law to the dispute was a factor strongly in favour of Singapore.

128 Before moving to the next factor (*ie*, the existence of proceedings elsewhere), I thought it appropriate to discuss the parties' arguments concerning a point that was related to, or arose from, the earlier factor (*ie*, the applicable law governing the dispute). This was the point of how the PRC Courts might try the disputes which were the subject of OA 945.

129 The Defendants asserted that the PRC Courts were fully capable of hearing the disputes in OA 945, whether in respect of PKUF Commodities or SG Commodities, and whether PRC law or the IRDA applied. The Singapore Court has recognised that the PRC Courts are well-established and well-recognised courts of justice which should not be lightly impugned.<sup>45</sup>

130 If the applicable law was the IRDA, the Defendants said that the PRC Court could ascertain and apply the IRDA. They relied on Professor Xu's explanation of seven established methods by which the PRC Court may ascertain foreign law, as well as the Memorandum of Understanding between Singapore and the PRC on the ascertainment of legal issues, which procedure has been provided for in Order 29A of the ROC. They suggested that there was no reason why the Applicants could not bring the avoidance claims under the IRDA in the PRC Court.<sup>46</sup>

131 I accepted that if the PRC Court agreed to apply the IRDA, the PRC Court would not face significant difficulty in ascertaining and applying the

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<sup>45</sup> Defendants' submissions para 75

<sup>46</sup> Defendants' submissions paras 49-51

IRDA to the determination of the clawback issues. However, that was not the end of the matter.

132 Rather, Professor Xu observed that since PRC law lacks specific provisions addressing the clawback actions in OA 945, and taking into account (amongst other factors) Article 5 of the Agreement, it was “highly likely” that the PRC Court would apply PRC law although Professor Xu did not entirely rule out the possibility that Singapore law might apply.<sup>47</sup>

133 The Applicants reiterated that the claims in OA 945 were essentially statutory clawback actions under the IRDA and the PRC Courts were ill-suited to hear such disputes. They asserted that taken at its highest, Professor Xu had only said that OA 945 could theoretically be commenced in the PRC but without addressing whether the PRC Courts could resolve the disputes in substance.

134 The Applicants highlighted, on the other hand, Mr Liao’s comment that “the fact that the PRC court can in theory accept such proceedings does not mean that the PRC court is able to resolve the avoidance dispute in substance”.<sup>48</sup> Also, Mr Liao noted that in asserting the claims in OA 945, the Liquidators were not merely stepping into the shoes of the Company to defend or assert ordinary civil rights but were seeking to exercise a liquidator’s core power to have the receivables assignment set aside so that the assigned claim reverted to the Company’s assets and could be administered and distributed in the Singapore insolvency proceeding.<sup>49</sup>

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<sup>47</sup> Professor Xu’s report paras 77-85

<sup>48</sup> Applicants’ submissions paras 56-58; Professor Xu’s report paras 62-70; Mr Liao’s report para 113

<sup>49</sup> Mr Liao’s report para 95

135 After considering various provisions of PRC law, Mr Liao concluded that if the avoidance claims were brought in a PRC Court, the PRC Court might take a more protective approach and the application of PRC law could not be entirely excluded.<sup>50</sup>

136 Professor Xu acknowledged that it was uncommon for liquidators in foreign bankruptcy proceedings to initiate bankruptcy avoidance actions in the PRC against PRC companies and therefore, the outcome of the Liquidators of the Company acting as the plaintiff in a bankruptcy avoidance litigation in a PRC Court remained uncertain.<sup>51</sup>

137 It appeared to me that both experts acknowledged the very real possibility or even the high likelihood that a PRC Court would not apply the IRDA but would instead apply PRC law. That scenario in turn raised the following three difficulties for the Applicants. First, under the PRC’s domestic avoidance regime, any avoidance claim commenced in the PRC would be time-barred given the shorter relation-back period and PRC law therefore “cannot deliver relief that is substantively equivalent to the avoidance remedies available under Singapore law in OA 945”.<sup>52</sup> Secondly, SG Commodities would ordinarily not be a party to the action and there could be issues relating to the service of papers on SG Commodities and the enforceability of any judgment obtained against it.<sup>53</sup>

138 Thirdly, ss 224, 225, 227, 438 and 439 of the IRDA set out an extensive list of orders that the Singapore Court can make (and which the Applicants were seeking in OA 945), including the restoration of the Company, PKUF

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<sup>50</sup> Mr Liao’s report paras 101-108

<sup>51</sup> Professor Xu’s report para 69

<sup>52</sup> Mr Liao’s report para 115

<sup>53</sup> Mr. Liao’s report paras 116-117

Commodities and SG Commodities to their respective positions as if the Agreement had not been entered into and requiring property to be vested in the Company if the Receivable had been applied to property.<sup>54</sup>

139 Professor Xu did not suggest that such orders could be sought from the PRC Courts. Nonetheless, the Defendants relied on the decision of the Court of Appeal in *Rappo, Tania v Accent Delight International Ltd and another and another appeal* [2017] SGCA 27 (“*Rappo*”).<sup>55</sup> In *Rappo*, the respondents argued that a stay should be refused because if the matter were heard in Switzerland, which was what the applicants wanted, the Swiss Courts could not order remedies in constructive trust and tracing but could only award damages. The Court of Appeal observed that even if that were so, the fact that a party would not have the benefit of some procedures or remedies would not by itself amount to a denial of substantial justice. This was a reflection of the general policy that a Court must be cautious not to pronounce that a litigant will be deprived of substantial justice if the foreign forum is available, appropriate, well-established and well-recognised.<sup>56</sup>

140 I accepted that even if the Applicants were unable to obtain the exact remedies sought in OA 945 in the PRC Courts, this did not alone amount to a denial of substantive justice. Nonetheless, the possible absence of the same remedies coupled with the possible time-bar under PRC law and the concern about enforceability of any judgment against SG Commodities, taken together, tilted the balance against the PRC as being a more appropriate forum.

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<sup>54</sup> Applicants’ submissions para 59

<sup>55</sup> Defendants’ submissions para 76

<sup>56</sup> *Rappo* at [107]-[110]

*The existence of proceedings elsewhere and the shape of the litigation*

141 As the Defendants were not relying on the existence of proceedings in the PRC Court as a connecting factor, I did not give separate consideration to this as a factor but I took the absence of any such proceedings into consideration as part of the shape of the litigation. For reasons which I will explain below, I concluded that the shape of the litigation was a factor which supported the Applicants’ position that OA 945 should not be stayed in favour of the PRC.

142 There were various legal proceedings which had been filed or were still ongoing in the Singapore Courts. OA 945 was commenced in September 2024. Before that, FGHK had filed HC/CWU/120/2022 (“**CWU 120**”) to wind up SG Commodities and it had filed HC/CWU/121/2022 (“**CWU 121**”) to wind up the Company. Both applications were resisted. SG Commodities agreed to provide security for FGHK’s claim against it and FGHK’s liquidators consented to a stay of CWU 120 pending an ongoing arbitration in the PRC. CWU 121 was dismissed at first instance and taken on appeal to the Court of Appeal by way of CA/CA 36/2025. The Court of Appeal issued its decision in *Founder Group (Hong Kong) Ltd (in liquidation) v Singapore JHC Co Pte Ltd* [2023] SGCA 40 (*Founder CA*) which ordered the Company to be wound up. The Court of Appeal appointed the Liquidators over the Company.

143 The Applicants filed HC/OA 408/2024 in April 2024 for permission to commence proceedings (*ie.* OA 945) and to appoint solicitors to assist them. The Applicants also filed HC/OA 548/2025 for approval of funding agreements for the purposes of pursuing OA 945.

144 It can be seen from the above that there were and are significant legal proceedings connecting the dispute in OA 945 to Singapore.

145 On the other hand, the Defendants suggested that OA 945 should be seen in context as part of the restructuring of the Founder Group and they noted that the restructuring of various entities in the Founder Group had been and was still being managed by the PRC Courts. The Company, and the disputes in OA 945, were but a small part of that jigsaw puzzle.

146 The Defendants further suggested that FGHK, which was not a party to OA 945, had orchestrated OA 945. The only true creditors of the Company were FGHK and PKUF Commodities (it will be recalled that Mr Cai's POD arose from his purchase of PKUF Commodities' debt whilst Rajah & Tann Singapore LLP's POD was for work done in acting for the Company in the various legal proceedings in Singapore). At its heart, OA 945 was a bilateral dispute between FGHK and PKUF Commodities being fought through the Company as a proxy and it was common ground that FGHK was the litigation funder for the Applicants' action in OA 945 to try to set aside the Agreement.

147 As for FGHK's debt, the Defendants explained that FGHK claimed a debt of US\$47.43m from the Company arising under three contracts of sale. This was the basis of CWU 121, which the Company resisted on several grounds. Although FGHK succeeded in the Court of Appeal, the Defendants pointed out that the Court of Appeal had not made a finding that the debt existed (*Founder CA* at [68]). The Defendants said that OA 945 was premised on the existence of the alleged debt and one of the key fundamental issues would be whether FGHK's alleged debt was valid or not. The Defendants argued that FGHK had woven its way through the Singapore legal system whilst avoiding a determination of whether that debt existed or not.

148 I understood the Defendants to be making two key points. The first key point was that the restructuring of the Founder Group as a whole was happening

in the PRC, with the Company and the disputes in OA 945 being but a small part of that jigsaw puzzle, and OA 945 was in reality a bilateral dispute between FGHK and PKUF Commodities being fought through the Company as a proxy and entirely funded by FGHK.

149 In my view, just because the bulk of the restructuring was taking place in the PRC did not necessarily mean that no part of the restructuring could happen elsewhere. I would have thought that the PRC Courts, or the PRC liquidators, as the case may be, would be well able to deal with the fact that one of the companies in the Founder Group (especially if it was merely a small piece in the jigsaw puzzle) was being dealt with under a different regime. Also, for whatever reason, the Founder Group had decided in the beginning to incorporate two of its companies in Singapore (the Company and SG Commodities) and it should have understood that by doing so such companies therefore became subject to the laws of the place of incorporation.

150 The Liquidators took issue with any suggestion that the Company was being used as a proxy and maintained that they had commenced OA 945 after proper consideration of the books and papers of the Company, with legal advice, and in discharge of their duty as Liquidators to pursue appropriate clawback actions. The Defendants did not put any material before the Court to counter this. Also, the fact that FGHK was funding OA 945 was not by itself a cause for alarm. As observed by the Court of Appeal in *PricewaterhouseCoopers LLP and others v Celestial Nutrifoods Ltd (in liquidation)* [2015] SGCA 20 at [52(b)]

... one of the Respondent's duties as a liquidator was precisely to maximise recovery for Celestial's creditors. The fact that these creditors include the Blackrock creditors who agreed to fund the investigation and pursue potential claims was irrelevant. The Respondent would be a [*sic*] breach of his duties as liquidator if he did not seek to determine whether there were claims that could be pursued for the benefit of the

creditors in general despite being put in funds to do so by some creditors.

151 The second key point was that the Defendants were not only saying that FGHK's debt had not been proven but also suggesting that FGHK had woven its way through the Singapore legal system whilst avoiding a determination of whether that debt existed or not. I asked counsel for the Defendants whether OA 945 would (indeed and finally) determine whether FGHK's debt existed or not. Counsel agreed that it would but maintained that the more appropriate forum for that determination was the PRC. However, there was no indication that the disputes in OA 945 would be determined in the PRC Courts anytime soon. There were no pending proceedings and the Defendants did not suggest that proceedings were imminent or incipient. Staying OA 945 therefore would not achieve the determination of FGHK's debt. On the contrary, staying OA 945 would seem to defer the determination of FGHK's debt. The Defendants' application to stay OA 945 therefore appeared to contradict the Defendants' concern that FGHK was avoiding a determination of its debt.

152 I concluded that the disputes which fell to be decided in OA 945 had taken root in the Singapore Courts from as far back as 2022. Taking into account my views on each of the connecting factors, I was not persuaded that OA 945 should be uprooted in favour of the PRC, especially where no parallel proceedings were afoot in the PRC, and I did not agree that the PRC was, *prima facie*, a more appropriate available forum than Singapore in which the disputes in OA 945 could be tried.

### ***Stage two***

153 Stage two of the *Spiliada* test arose if the Court had concluded that there was *prima facie* a more appropriate alternative forum. The Court would then

ordinarily grant a stay unless there were circumstances by reason of which justice required that a stay should nonetheless not be granted.

154 In the overall analysis considering all the factors mentioned above, there were no strong connections in favour of the PRC and the Defendants had not persuaded me that OA 945 should be stayed because the PRC Courts were the clearly or distinctly more appropriate forum than the Singapore Court to try the disputes that were the subject of OA 945. In my view, stage two of the *Spiliada* test did not arise for consideration and I decided Issue 4 in favour of the Applicants.

155 In my view, and drawing on the following exposition from *Rappo* at [69]–[72], Singapore was the forum which was the more suitable for the ends of justice, and pursuit of the litigation in Singapore was more likely to secure those ends:

***Appropriate and available alternative fora***

69 In the present appeals, at the first stage of the *Spiliada* analysis, the legal burden lies on the Appellants to demonstrate that Switzerland and/or Monaco are “clearly or distinctly more appropriate” fora than Singapore for the trial of the substantive dispute between the parties (see *Spiliada* at 477). Whether this is indeed the case turns on a consideration of the factors that connect the dispute with the competing jurisdictions.

70 We think it is appropriate here to emphasise that it is the *quality* of the connecting factors that is crucial in this analysis, rather than the quantity of factors on each side of the scale. ...

71 We identified five such incidences in *JIO Minerals FZC v Mineral Enterprises Ltd* [2011] 1 SLR 391 (“*JIO Minerals*”) at [42] (citing with approval *Halsbury’s Laws of Singapore* vol 6(2) (LexisNexis, 2009) at paras 75.091–75.095): first, the personal connections of the parties and the witnesses; second, the connections to relevant events and transactions; third, the applicable law to the dispute; fourth, the existence of proceedings elsewhere (that is, *lis alibi pendens*); and fifth, the “shape of the litigation”, which is shorthand for the manner in

which the claim and the defence have been pleaded. While this provides a useful list of potentially relevant indicators for the court's consideration, we think that a mechanistic application of this framework will be of little utility and may in fact be misleading in certain cases. ... The court should always be astute to determine those incidences that are likely to be material to the fair determination of the dispute, and to ascribe greater weight to those incidences over others, as the case may require.

Ultimately, the lodestar for a court tasked with identifying the natural forum is whether any of the connections point towards a jurisdiction in which the case may be 'tried more suitably for the interests of all the parties and for the ends of justice', to use the words of Lord Goff of Chieveley in *Spiliada* at 476. This lies at the heart of the *forum non conveniens* analysis, and we can do no better than to reiterate the elegant summation of principle by Lord Sumner in *La Société du Gaz de Paris v La Société Anonyme de Navigation "Les Armateurs Français"* 1926 SC (HL) 13 at 22:

... [O]ne cannot think of convenience apart from the convenience of the pursuer or the defender or the court, and the convenience of all these three, as the cases show, is of little, if any, importance. If you read it as 'more convenient, that is to say, preferable, for securing the ends of justice,' I think the true meaning of the doctrine is arrived at. *The object, under the words 'forum non conveniens' is to find that forum which is the more suitable for the ends of justice, and is preferable because pursuit of the litigation in that forum is more likely to secure those ends.* [emphasis added in *Rappo*]

### **Issue 5: Whether a case management stay of OA 945 should be granted**

156 The Defendants' final alternative prayer in SUM 1656 was that the whole action of OA 945 be stayed on case management grounds. The supporting affidavit at [119] reiterated this but without further explanation.

157 The Court of Appeal in *Rex International Holding Ltd and another v Gulf Hibiscus Ltd* [2019] 2 SLR 682 made it clear (at [11]):

The question of case management arises where there are overlapping issues that will have to be ventilated before different fora among different parties, some of whom are bound by an arbitration agreement, while others are not. The typical case would be one where there is: (a) some overlap in the

**parties** to the putative arbitration and the parties to the suit; and (b) some overlap in the **issues** that will be engaged in the putative arbitration and those in the suit. ... The short point is that in order for case management concerns to be relevant at all, there must first be the existence or at least the imminence of separate legal proceedings giving rise to a real risk of overlapping issues. Until such time, it would be premature to consider, let alone grant, a case management stay. [emphasis in original]

158 Given that the Defendants did not put forward the existence or even the imminence of separate legal proceedings that could give rise to a real risk of overlapping issues, I could not agree that a case management stay would be in any way appropriate. On Issue 5, I found in favour of the Applicants.

### **Conclusion**

159 I did not allow the Defendants' application in SUM 1656. After hearing from the parties, I awarded costs to the Applicants fixed at S\$8,000 with disbursements to be agreed or, failing agreement, to be fixed by the Court.

160 As always, I was grateful to counsel for their assistance to the Court.

Gan Kam Yui  
Assistant Registrar

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the applicants  
Ong Boon Hwee William, Koh Zhen-Xi Benjamin and Kenneth  
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