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

[2026] SGHC 240

Originating Application No 945 of 2024 (Registrar's Appeal No 89 of 2026)

Between

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

… *Appellants*

And

(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)

… *Respondents*

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JUDGMENT

[Civil Procedure — Service — Service out of jurisdiction]
[Civil Procedure — Stay of proceedings]
[Conflict of laws — Jurisdiction — Submission to jurisdiction — Whether proof of debt filing amounts to submission to jurisdiction and/or waiver of right to challenge exercise of jurisdiction]
[Conflict of laws — Jurisdiction — Discretionary — Natural forum]

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

[2026] SGHC 240

General Division of the High Court — Originating Application No 945 of 2024 (Registrar's Appeal No 89 of 2026)
Mohamed Faizal J
29 September 2026

23 November 2026 Judgment reserved.

Mohamed Faizal J:

Introduction

1 This is an appeal against the decision of the learned Assistant Registrar Gan Kam Yuin ("AR") dismissing HC/SUM 1656/2025 ("SUM 1656"). Singapore Commodities Group Co Pte Ltd ("SG Commodities") and PKU Founder Commodities Group Co Ltd ("PKUF Commodities") (collectively, "Appellants") had applied in SUM 1656 to set aside the grant of permission to serve Originating Application No 945 of 2024 ("OA 945") out of jurisdiction and, in the alternative, to stay OA 945. The applicants in OA 945, Singapore JHC Co Pte Ltd (in liquidation) ("SG JHC") and its liquidators are the respondents ("Respondents") in this appeal.

Facts

Parties to the dispute

2 SG JHC is a company incorporated in Singapore which had been placed into compulsory liquidation by an order of the Court of Appeal on 8 September 2023 (see *Founder Group (Hong Kong) Ltd (in liquidation) v Singapore JHC Co Pte Ltd* [2023] 2 SLR 554). The court appointed the first, second and third respondents as the joint and several liquidators of SG JHC ("Liquidators") on 29 September 2023. SG JHC is a wholly owned subsidiary of Beijing JHC International Trade Co Ltd (in liquidation), which is in turn wholly owned by Shanghai JHC International Trade Co Ltd (in liquidation). Both these companies are incorporated in the People's Republic of China ("PRC").

3 SG Commodities is a company incorporated in Singapore. It is a wholly owned subsidiary of PKUF Commodities, which is incorporated in the PRC.

Background to the dispute

4 The companies stated above and another relevant company, Founder Group (Hong Kong) Limited (in liquidation) ("FGHK"), were all related companies in the "Founder Group". FGHK went into liquidation in October 2021. It was on FGHK's application that SG JHC was wound up, based on an alleged debt of US$47.4m. On 15 December 2023, FGHK filed a Proof Of Debt ("POD") in SG JHC's winding up for US$47.4m and S$86,999.05 of unpaid legal costs incurred in its application to wind up SG JHC.[1]

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[1] Appellant's Submissions in HC/RA 89/2026 dated 15 September 2026 ("AS") at para 15(1).

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5 It is contended that SG Commodities owed SG JHC US$26.02m and SG JHC, in turn, owed PKUF Commodities US$41.27m. On 9 September 2021, PKUF Commodities and SG JHC entered into a debt transfer agreement ("Agreement") for the transfer, from SG JHC to PKUF Commodities, of a US$26.02m receivable ("Receivable") due from SG Commodities to SG JHC.[2] In exchange, SG JHC's debt to PKUF Commodities was reduced by US$26.02m to US$15.25m. PKUF Commodities filed a POD for US$15.25m in SG JHC's liquidation estate on 26 January 2024. One Mr Cai Ning ("Mr Cai") thereafter apparently purchased the debt of US$15.25m owed by SG JHC to PKUF Commodities sometime in January 2025 and subsequently filed a POD for the said sum on 10 April 2025.[3]

6 The Respondents (*ie*, SG JHC and the Liquidators) commenced OA 945 on 16 September 2024, seeking to set aside the Agreement pursuant to various provisions under the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ("IRDA") by reason of it being a transaction at an undervalue (s 224 of the IRDA), an unfair preference (s 225 of the IRDA) and/or a transaction defrauding creditors (s 438 of the IRDA) (collectively, the "IRDA Provisions").[4] On 27 September 2024, the Respondents obtained permission from the General Division of the High Court to serve OA 945 on PKUF Commodities out of jurisdiction ("SOOJ Order").

7 The Appellants then applied in SUM 1656 for the SOOJ Order to be set aside on the grounds that it was obtained without proper basis and that the

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2 Respondent's Submissions in HC/RA 89/2026 dated 15 September 2026 ("RS") at para 12.

3 AS at paras 15 and 16.

4 RS at para 11.

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Singapore courts have "no jurisdiction" as against PKUF Commodities to hear OA 945 as "Singapore is not the proper forum to hear the action". Alternatively, they sought for OA 945 to be stayed on either *forum non conveniens* or case management grounds.[5]

Decision Below

8 The AR's grounds of decision are found in *Paresh Tribhovan Jotangia v Singapore Commodities Group Co Pte Ltd* [2026] SGHCR 19 ("GD"). In essence, the AR dismissed SUM 1656 in its entirety, in large part agreeing with the Respondents' arguments.

9 Before the AR, the Appellants had argued that the SOOJ Order should be set aside due to the lack of jurisdiction under the relevant IRDA Provisions. It was contended that the Respondents had erroneously relied on s 16(1) of the Supreme Court of Judicature Act 1969 (2020 Rev Ed) ("SCJA") read with the Rules of Court 2021 ("ROC 2021") in OA 945. ROC 2021 does not apply to proceedings under the IRDA and jurisdiction should instead have been established under the IRDA.[6] Specifically, the Respondents should have established that there was a "reasonable prospect of success" that the IRDA Provisions relied on in OA 945 would be applied extraterritorially to PKUF Commodities by showing that PKUF Commodities had a "sufficient connection" to Singapore.[7]

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5 Summons for Stay of Proceedings and Setting aside service of an Originating Process in SUM 1656 filed 12 June 2025.

6 Defendants' Submissions in SUM 1656 dated 19 March 2026 ("DS in SUM 1656") at paras 15–18.

7 DS in SUM 1656 at paras 19–21 and 33–44.

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10 The AR dismissed these arguments. She took the view that, pursuant to s 10(1) of the IRDA, the Respondents were entitled to rely on ROC 2021 in applying for the SOOJ Order as there was indeed a lacuna in the IRDA as to service of an originating process such as OA 945 (GD at [20]–[37]). Since the Singapore court had subject-matter and *in personam* jurisdiction over PKUF Commodities, the Respondents did not have to show, to the standard of a reasonable prospect of success, that the Singapore court would apply the IRDA Provisions extraterritorially to PKUF Commodities. Further, they would have already had to address the extraterritoriality of the IRDA Provisions when demonstrating a "serious question to be tried on the merits of the claim" in making the SOOJ Order application (at [38]–[51]).

11 The Respondents' primary position had been that PKUF Commodities submitted to the Singapore court's jurisdiction by filing a POD. This was based principally on the decision in *Rubin v Eurofinance SA* [2013] 1 AC 236 ("*Rubin*"), where the United Kingdom Supreme Court held that orders may be made against a foreign creditor where that creditor files a proof of debt in an insolvent estate, thereby submitting to the jurisdiction of the court supervising that liquidation.[8] The filing of a POD should also be taken as a waiver of the Appellants' right to challenge jurisdiction.[9] Before the AR, the Appellants relied on academic criticism of *Rubin* (the contours of which will be discussed later on), suggesting that the mere submission of a POD should not be taken as a submission to jurisdiction for claims which have neither been formulated nor served (GD at [60]–[61]).

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8 Applicants' Submissions in SUM 1656 dated 19 March 2026 ("AS in SUM 1656") at paras 14–19.

9 AS at paras 20–22.

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12 The AR agreed with the Respondents that PKUF Commodities had submitted to the jurisdiction of the Singapore court by filing its POD. The academic criticism relied upon by the Appellants had nevertheless recognised that the prevailing position as a matter of law was that a POD filing gave the supervising court sufficient basis to make orders against a foreign creditor. The AR also opined that the lodging of a POD can and does carry important consequences which may belie its simple appearance (at [52]–[71]). She extended this reasoning to the finding that a POD filing would also amount to a waiver of a jurisdictional challenge, whether it be the existence or exercise of jurisdiction. However, it was acknowledged by the AR that there were no case authorities specifically dealing with this point (at [72]–[79]).

13 The AR's findings on PKUF Commodities' submission and waiver were sufficient to dispose of SUM 1656. Nevertheless, the AR proceeded to consider the merits of the Appellants' application to stay OA 945 on *forum non conveniens* and case management grounds. On the matter of *forum non conveniens*, the Appellants and Respondents called Professor Xu Yang Guang ("Professor Xu") and Mr Ronghua Liao ("Mr Liao") respectively, to give expert evidence on PRC law.

14 The Appellants took the view that the Respondents bore the burden of showing that Singapore is the proper forum and/or is not *forum non conveniens* in connection with IRDA proceedings.[10] They argued that the Respondents had failed to show that Singapore was clearly and distinctly the more appropriate forum to resolve the dispute in OA 945. Instead, the PRC was the more appropriate forum, considering the connections of the actors, witnesses,

[10] DS in SUM 1656 at paras 45–47.

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documentary evidence and pertinently, a supposed exclusive jurisdiction clause ("EJC") in favour of the PRC in Article 5 of the Agreement.[11]

15 The Respondents denied the existence of any applicable EJC in the Agreement.[12] Applying the test in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 ("*Spiliada*"), the majority of the connecting factors pointed to Singapore.[13] In particular, the Respondents argued that the PRC courts are ill-suited to resolve the disputes in OA 945 and there was nothing to suggest that the orders a Singapore court could make pursuant to the IRDA could likewise be made by a PRC court.[14]

16 To the extent that the Appellants had sought to stay OA 945 because of the EJC, after considering the evidence by the PRC law experts, the AR came to the view that Article 5 of the Agreement was not an EJC and that the disputes in OA 945 would not fall within its scope (GD at [80]–[100]).

17 On the matter of *forum non conveniens*, the AR found that the Appellants bore the burden of showing that OA 945 should be stayed in favour of the PRC (GD at [102]–[104]). Applying the test in *Spiliada*, the AR accepted that the personal connections of the parties and witnesses pointed in favour of the PRC (at [108]–[122]). The connections to relevant events and transactions also marginally pointed in favour of the PRC. However, although the Agreement was connected to the PRC, OA 945 concerned an action by the Singapore court-appointed Liquidators invoking Singapore legislation, *ie*, the

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11 DS in SUM 1656 at paras 48–74.

12 AS in SUM 1656 at paras 23–39.

13 AS in SUM 1656 at paras 42–64.

14 AS in SUM 1656 at paras 56–60.

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IRDA (at [123]–[124]). In this vein, the applicable law to the dispute was a factor strongly in favour of Singapore as the experts both acknowledged the real possibility that a PRC court would apply PRC law instead of the IRDA, which would have raised difficulties for the Respondents (at [125]–[137]). The absence of the exact remedies sought in OA 945 taken together with a possible time-bar under PRC law, and concerns about the enforceability of any judgment against SG Commodities pointed in favour of Singapore being the more appropriate forum (at [140]). The shape of the litigation likewise pointed in favour of Singapore as there were various legal proceedings which had been filed or were still ongoing in the Singapore courts, and specifically, the disputes in OA 945 had taken root in the Singapore courts (at [141]–[152]). The second stage of the *Spiliada* test, being whether there were circumstances by reason of which justice required that a stay should nonetheless not be granted, did not arise for consideration as the AR concluded that Singapore was the more appropriate forum (at [153]–[155]).

18 The AR thus dismissed SUM 1656 in its entirety.

Parties' cases on appeal

19 The Appellants appeal against the whole of the AR's decision. Their case on appeal is, broadly speaking, three-fold. First, the SOOJ Order should be set aside as the Respondents failed to establish that the IRDA Provisions relied upon in OA 945 has extraterritorial reach over PKUF Commodities. There is a presumption against extraterritoriality of the IRDA and extraterritoriality had to be established as a matter of construction in the SOOJ Order application.[15] Indeed, the IRDA Provisions do not extend extraterritoriality to PKUF

[15] Appellants' Submissions on appeal dated 15 September 2026 ("AS") at paras 24–30.

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Commodities as on the facts, there is no "sufficient connection" between PKUF Commodities and Singapore.[16]

20 Second, the AR erred in finding that the POD filing amounted to a submission to jurisdiction. This proposition cannot be without limitation – where there has been no adjudication, no action taken by or required from the creditor, and no distribution of dividends, the POD filing should not be seen as a submission to jurisdiction.[17] Further, the proposition in *Rubin* is rooted in a rationale of equal bargain, but PKUF Commodities stands to gain nothing from filing its POD as the debt subject to the POD was sold to Mr Cai.[18] The AR also erred in finding that the POD filing amounted to a waiver of any right to challenge both the existence and exercise of jurisdiction. The POD filing should not be seen as a waiver of the right to contend that the court should decline to exercise its jurisdiction on *forum non conveniens* grounds.[19]

21 At the hearing of the appeal before me, counsel for the Appellants did not submit extensively on the extraterritoriality argument[20] or whether the POD filing amounted to a submission to jurisdiction and/or a waiver of the right to challenge the exercise of jurisdiction.[21] Instead, the Appellants suggested that the main question for me to consider on appeal is whether Singapore or the PRC is the proper forum to resolve the dispute in OA 945.[22]At the hearing, I articulated some concerns about there being possible confusion between

16 AS at paras 31–38.

17 AS at paras 39–47.

18 AS at paras 48–51.

19 AS at paras 52–60.

20 Transcript of appeal hearing ("Transcript") at p 21 ln 7–p 22 ln 2.

21 Transcript at p 18 ln 8–p 19 ln 2.

22 Transcript at p 19 ln 3–22; p 27 ln 13–16.

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contesting the existence of, and the exercise of, jurisdiction arising from their position.[23] I shall return to elaborate on this in my analysis below.

22 Third, the Appellants' case is that Singapore is not the proper forum to resolve the dispute in OA 945 in the interest of the parties and the ends of justice. There is no reason why the Respondents cannot bring the avoidance claims in the PRC courts.[24] The Appellants submit that the factors relating to the actors and witnesses point in favour of the PRC being the more appropriate forum.[25] This, I would observe, is in line with the AR's conclusion on these factors. Before me, the Appellants also emphasised the importance of specific witnesses who were located in the PRC, a point I will discuss in detail below. The Appellants argue that the AR erroneously found that the compellability of witnesses was not a weighty consideration as both the Singapore courts and the PRC courts have no power to compel the attendance of PRC witnesses. Although the PRC court does not employ the "subpoena regime" that applies in the domestic context, it is nonetheless recognised that the PRC witnesses would have a duty to testify under PRC law.[26] The AR failed to appreciate the compellability and convenience of witnesses by proceeding on the basis that OA 945 would not proceed to trial, as PKUF Commodities had earlier indicated that it was considering converting OA 945 into an originating claim.[27] Further, the AR erred by suggesting that PKUF Commodities had to show it was the "more disadvantaged party" as the doctrine of *forum non conveniens* compares

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23 Transcript at p 20 ln 20–p 23 ln 28.

24 AS at paras 61–64.

25 AS at paras 65–66.

26 AS at paras 67–70.

27 AS at paras 77–78.

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the balance of convenience between jurisdictions and not between parties.[28] The applicable law is also a neutral factor as the dispute is effectively one that is between PKUF Commodities in liquidation in the PRC and SG JHC in liquidation in Singapore.[29] The Appellants also maintain that there is an EJC in favour of the PRC in the Agreement.[30] As the factors largely point in favour of the PRC as the more appropriate forum, the AR also erred in finding that the second stage of the *Spiliada* test did not arise for consideration. In this connection, they argue that without access to witnesses and documents in the PRC, a Singapore court would have serious difficulty determining the truth of the matters concerned in OA 945.[31]

23 The Respondents argue that the Appellants conflate the concepts of jurisdiction and extraterritoriality. Once the court has *in personam* and subject-matter jurisdiction, it is properly seised of jurisdiction and the extraterritoriality of the IRDA Provisions goes only towards the power of the court to grant the reliefs claimed.[32] The AR also correctly found that the POD filing amounted to the Appellants' submission to jurisdiction, as that is in line with case authorities and the Singapore courts' supervisory jurisdiction of the POD regime generally.[33] The POD filing is also a waiver of the Appellants' right to challenge jurisdiction on *forum non conveniens* grounds given that the debt claimed in the POD directly relates to the subject matter of OA 945, and PKUF Commodities

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28 AS at paras 82–83.

29 AS at paras 84–85.

30 AS at paras 86–90.

31 AS at paras 91–94.

32 Respondent's Submissions on appeal dated 15 September 2026 ("RS") at paras 16–21.

33 RS at paras 22–28.

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would have thus intended that the quantum of its debt is to be adjudicated under the supervision of the Singapore courts.[34]

24 The Respondents submit that Article 5 of the Agreement is not an EJC in favour of the PRC. Properly construed, Article 5 is no more than a non-exclusive, permissive submission to the PRC courts.[35] In any event, while Article 5 pertains to disputes on the validity of the Agreement, the dispute in OA 945 does not fall within this scope as it concerns statutory clawback actions pursuant to the IRDA that are unrelated to the validity of the Agreement as a matter of PRC contract law.[36] Even if there was a valid EJC, there would be a fragmentation of the dispute across multiple jurisdictions as the dispute in relation to SG Commodities should be heard in Singapore, but it is not a party to the Agreement.[37]

25 Finally, the Respondents submit that Singapore is the proper forum. As OA 945 is brought by the Singapore court-appointed liquidators under Singapore legislation, Singapore is better placed to hear the matter than the PRC court notwithstanding the PRC's court capacity to do so.[38] It has not been shown that the PRC court can resolve the dispute in substance, especially considering that there has been no suggestion that the orders sought for pursuant to the IRDA are equally available in the PRC courts.[39] The shape of the litigation also suggests that Singapore is the proper forum as the dispute was rooted in

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34 RS at paras 29–31.

35 RS at paras 33–35.

36 RS at paras 38–42.

37 RS at paras 45–48.

38 RS at paras 50–62.

39 RS at paras 68–73.

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Singapore since the time of winding-up proceedings.[40] Even if the connection of parties and witnesses point in favour of PRC, this factor pales in comparison to the others in favour of Singapore.

26 In addition to the above, I note that the Appellants had an alternative prayer in SUM 1656 for a stay of OA 945 on case management grounds. This was not argued below. The AR rightly dismissed the case management stay application as no reasons were put forth by the Appellants in support of this (GD at [155]–[158]). As the matter of a case management stay appears to have been jettisoned altogether on appeal, I shall not consider it any further.

Issues before this court

27 The issues before this court are as follows:

(a) Issue 1: Whether the SOOJ Order should be set aside as the Respondents failed to establish the extraterritorial reach of the IRDA Provisions to PKUF Commodities?

(b) Issue 2: Whether PKUF Commodities' POD filing amounts to a submission to the jurisdiction of the Singapore courts?

(c) Issue 3: Whether PKUF Commodities' POD filing amounts to a waiver of the challenge of exercise of jurisdiction on *forum non conveniens* grounds?

(d) Issue 4: Whether Singapore is the proper forum to resolve the dispute in OA 945?

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40 RS at paras 74–76.

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Analysis of Issue 1

28 I turn first to Issue 1, *ie*, whether the SOOJ Order should be set aside as the Respondents failed to establish the extraterritorial reach of the IRDA Provisions to PKUF Commodities. As I intimated earlier, the Appellants' case on extraterritoriality is not altogether clear. The Appellants argue that as there is a presumption against extraterritoriality of the IRDA, the Respondents should have established the "extraterritorial jurisdiction" of the IRDA Provisions "as a matter of [statutory] construction" at the SOOJ application stage.[41] The Respondents' alleged failure to show that the Singapore court would grant the orders sought under the IRDA Provisions over PKUF Commodities, a foreign defendant, should result in the SOOJ Order being set aside.[42]

29 The Appellants further suggest that the Respondents should have shown that PKUF Commodities, a foreign company, had a "sufficient connection to Singapore in respect of the reliefs sought" in OA 945 pursuant to the IRDA Provisions.[43] They rely on *In re Paramount Airways Ltd* [1993] Ch 223 ("*Paramount Airways*") for the proposition that in service out of jurisdiction applications, there must be safeguards against the "extraterritorial reach" of the relevant provisions.[44] There, the English Court of Appeal upheld an order granting leave for service abroad in respect of claims by administrators of an English company under s 238 of the Insolvency Act 1986 (c 45) (UK) ("UK Insolvency Act"), which is *in pari materia* with s 224 of the IRDA. The court held that "if a foreign element is involved the court will need to be satisfied that,

41 AS at paras 28–30.

42 AS at para 25.

43 AS at para 35.

44 AS at para 33.

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in respect of the relief sought against him, the defendant is sufficiently connected with England for it to be just and proper to make the order against him despite the foreign element" (at 239H–240A). Applying this test of a "sufficient connection", the Appellants argue that the IRDA Provisions "do not extend extraterritoriality" on the facts to PKUF Commodities as the "overwhelming predominance of connections" points to the PRC.[45] The SOOJ Order should be set aside for these reasons.

30 Having considered the parties' submissions and the applicable law for service out of jurisdiction ("SOOJ") generally, the Appellants' case on extraterritoriality is, in my judgment, erroneous in law for several reasons. Indeed, it seems to me that many legal concepts have been conflated and require clarification. I explain.

31 First, as a starting point, and unlike their case below, the Appellants now accept that the Respondents were entitled to rely on the SCJA, ROC 2021 (and thus the Supreme Court Practice Directions 2021 ("SCPD 2021")) in making its SOOJ Order application (see [9] above). This was confirmed by the Appellants at the hearing.[46] The Appellants, however, appear to understand the AR as suggesting that satisfaction of the SOOJ requirements in the ROC 2021 is "necessary but insufficient" and that, in particular, proving "extraterritoriality" was "something more", *ie*, an additional step that was required.[47] In my view, the AR was not at all suggesting that proving extraterritoriality was required above and beyond the relevant requirements under the ROC 2021 and SCPD 2021 for granting the SOOJ Order (see GD at [45]–[46]). Indeed, there is strictly

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45 AS at paras 35–37.

46 Transcript at p 23 ln 2–21.

47 AS at paras 27–28.

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speaking no such "extraterritoriality" requirement in the ROC 2021 or the SCPD 2021. Once PKUF Commodities was properly served "in the circumstances authorised by and in the manner prescribed by Rules of Court" (*ie*, O 8 r 1 and O 8 r 2 of the ROC 2021), by operation of s 16(1)(*a*)(ii) of the SCJA, the General Division of the High Court had the jurisdiction to hear OA 945 *in personam*. In other words, there is no further standalone requirement apart from what is already stated in the ROC 2021 and SCPD 2021. Therefore, if the Appellants wish to suggest any need to prove extraterritoriality, this must necessarily be read into the relevant requirements under the ROC 2021 or SCPD 2021 for the grant of a SOOJ order.

32 Proceeding from the above, the starting point should thus be the requirements under O 8 r 1(1) of the ROC 2021 and para 63(2) of the SCPD 2021 for showing that the Singapore court is the appropriate court to hear the action, which I reproduce here:[48]

> (a) there is a good arguable case that there is sufficient nexus to Singapore;
>
> (b) Singapore is the *forum conveniens*; and
>
> (c) there is a serious question to be tried on the merits of the claim.

33 For the avoidance of doubt, apart from the above, approval for service out of jurisdiction may also be granted if an applicant can show that the court "has the jurisdiction … to hear the action" (O 8 r 1(1) of the ROC 2021). A suggested example of this is where the court has jurisdiction under the Choice of Courts Agreements Act 2016 (*Halsbury's Laws of Singapore, Conflict of*

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48 SCPD 2021 at para 63(2).

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Laws vol 6(2) (LexisNexis Singapore, updated September 2023) ("*Halsbury's*") at para 75.038). In this case, I shall focus only on the ground that the Singapore court is "the appropriate court to hear the action" as this was the basis upon which the Respondents had obtained the SOOJ Order.[49]

34 Second, to the extent that the Appellants have confused extraterritoriality with jurisdiction as a juridical concept, it may be of some utility for me to clarify the differences between the two. It would appear from the case law that extraterritoriality and jurisdiction are distinct concepts, although extraterritoriality may occasionally be referred to as "extra-territorial jurisdiction". In *Re Pacific Andes Resources Development Ltd* [2018] 5 SLR 125 ("*Pacific Andes*"), the court observed that given the scheme of arrangement, the court had both subject-matter and *in personam* jurisdiction over any creditors participating in the scheme. However, having construed s 210(10) of the Companies Act 1967 (Cap 50, 2006 Rev Ed) under which the applicants were seeking to restrain the commencement or continuation of proceedings *elsewhere*, the court concluded the provision did not confer such a power on the court and declined to grant the stay sought (at [18]–[19]). Therefore, it appears to me that extraterritoriality pertains to the *exercise* of the court's power to make orders affecting matters beyond local territory. Such "extraterritorial powers" must be statutorily conferred upon the court for them to be exercised. Contrastingly, the matter of jurisdiction goes towards the court's authority to hear a case (*Allenger, Shiona v Pelletier, Olga* [2022] 3 SLR 353 ("*Allenger*") at [73]–[74]). A court may have both subject-matter jurisdiction over a matter and *in personam* jurisdiction over the defendant in that matter, and thus be properly seised of jurisdiction, but not be able to apply Singapore law extraterritorially and grant the statutory relief sought as the statute does not

[49] Second affidavit of Ho May Kee dated 26 August 2024 in OA 945 at para 16.

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confer upon the court the power to do so (*Allenger* at [74]). Properly understood then, extraterritorially and jurisdiction are separate and distinct concepts.

35 Third, notwithstanding the above, I accept that concerns about extraterritoriality may, in some cases, be relevant at the SOOJ application stage. In my view, and as a general observation, whether a particular statute can be extra-territorially applied may occasionally be relevant to whether "there is a serious question to be tried on the merits of the claim" as the eventual application of that statutory provision goes towards the likelihood of success of the claim (see para 63(2)(*c*) of the SCPD 2021). The AR likewise considered para 63(2)(*c*) of the SCPD 2021 to be the relevant limb under which any need to address extraterritoriality of the IRDA Provisions would have arisen (GD at [46]). To illustrate, if an applicant sought approval for SOOJ for a claim pursuing relief under a statutory provision which a Singapore court clearly has no power to grant as against a foreign defendant, the court would have little reason to approve the SOOJ as the claim could realistically never succeed (in that the court would never be empowered to grant such extra-territorial relief, even if the claim were otherwise a meritorious one). In this sense, the Singapore court would not be the appropriate court to hear the action as it has no power to grant the relief sought. I stress that I am here referring to the question of whether the court *has* the power to apply Singapore legislation extraterritorially, and not whether the court *would* exercise such a power.

36 In this connection, it is not entirely clear what the Appellants' position is on the "test" for the extraterritoriality of the IRDA Provisions. Before the AR, the Appellants had argued that there must be a "reasonable prospect of success" that the Singapore court *would* (not could) apply the IRDA Provisions extraterritorially to PKUF Commodities (GD at [38]). The Appellants' reliance on the "sufficient connection" test in *Paramount Airways* also suggests that they

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view the question of extraterritoriality as one of degree. The "sufficient connection" test appears to me to pertain to the *likelihood* of any orders being made against a foreign defendant as it is a matter of discretion – whether the defendant is sufficiently connected with the local forum for it to be just and proper to make the order against him despite the foreign element (see [29] above). This, again, goes towards the chances of success of the claim. However, the "sufficient connection" test (even if applicable) can only arise if the legislation indeed *has* extraterritorial effect, which, properly understood, is a simple question of whether the legislation confers upon the court the power to make orders that would affect matters beyond its borders. As the Appellants themselves submit, extraterritoriality of the IRDA Provisions should be established as a matter of statutory construction.[50] In my view therefore, if there can be said to be a "test" for extraterritoriality of the IRDA Provisions, it would be whether the provisions confer upon the court the power to make orders with extraterritorial effect as a matter of construction.

37 Proceeding from this, *Paramount Airways* does not assist the Appellants. As I explained, extraterritoriality of any particular legislation goes towards whether the court has the power to make orders with extraterritorial effect. Whether the court should exercise its discretion to grant the reliefs sought as against a foreign defendant is a separate and second order question. As noted above, the "sufficient connection" test in *Paramount Airways* goes towards the likelihood of success of the claim. The court in *Paramount Airways* likewise implicitly recognised that the question of whether the court has the power to apply the relevant provisions as against a certain person was a matter of statutory interpretation having regard to parliamentary intention (at 239D to 239E). Since the relevant provision there gave the court the power to make

[50] AS at para 30.

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orders against "any person", the court concluded that there was no particular limitation to its application. In this connection, the court raised two safeguards against the potential overreach of the English courts – these being the exercise of the court's discretion to grant or not grant orders sought under the relevant provisions (at 239F to 240G), and the court's discretion to grant leave to serve abroad (at 240H to 241G). The court then held that to grant leave for service abroad where a foreign element is involved, "*one of the factors*" to 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" [emphasis added] (at 241G). As a starting point, a failure to establish a sufficient connection in respect of the relief sought, being only *one of the factors* to be considered, alone would not be fatal to a service abroad application even in the UK context.

38 More importantly, I am not convinced that the approach in *Paramount Airways* is applicable to the present case. As the AR and Respondents noted (GD at [44]–[45]), the UK Insolvency Rules 1986 then in force specifically disapplied the general rules as to service abroad to insolvency proceedings. It was in this context that the court was left to determine what requirements needed to be satisfied before a court should exercise its discretion to grant leave for service abroad in respect of insolvency proceedings. This is not the case in Singapore, and the Appellants accept (at least before me on appeal) that the general rules for SOOJ applications under the ROC 2021 applies. Additionally, in so far as the *power* to grant the reliefs sought was concerned, the court in *Paramount Airways* in fact concluded that the UK Insolvency Act had extraterritorial reach and that the English court had "a jurisdiction of unlimited territorial application" (at 240F). What was more relevant was whether the court should or would exercise this power to grant the reliefs sought as against a

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foreign defendant. I make this observation only to show that the supposed requirements for granting service abroad in *Paramount Airways* in fact had little to do with the anterior question of whether the UK Insolvency Act could be applied extraterritorially. The "sufficient connection" test is therefore not a test to determine extraterritoriality. If the Appellants are attempting to suggest that a SOOJ applicant under the ROC 2021 must establish that there is some level of certainty that the reliefs sought *would* be ordered against a foreign defendant, this is plainly not the position in law. In so far as the likelihood of success of a claim are relevant, the standard being that "there is a serious question to be tried on the merits" is not a high one (see [39] below).

39 Additionally, I observe that it would be a rare case that concerns about extraterritoriality would lead to the conclusion that there is no serious question to be tried on the merits of the claim as a basis to refuse permission for SOOJ. It is trite that whether there is a serious question to be tried on the merits is a mere threshold requirement that does not command a high standard. The claimant need only show that there is a substantial question of law or fact that would need to be resolved at trial which is not so hopeless in respect of which the claimant may prevail at trial (see, for example, *Cosmetic Care Asia Ltd v Sri Linarti Sasmito* [2021] SGHC 157 at [39]–[40]). In the present case, given my conclusions above on the legal nature of the inquiry as to extraterritoriality, in my view, a dispute as to the extraterritorial effect of the IRDA Provisions (assuming one even exists) would itself likely amount to a serious question to be tried on the merits of the claim. As I explained, extraterritoriality of the IRDA Provisions would have to be established as a matter of construction. This being a legal exercise, it can properly be considered a substantial question of law that should be determined in OA 945 itself.

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40 As a more general observation within the context of the ROC 2021 requirements, there may be a case where the absence of extraterritoriality (*ie*, that the court has no power to grant relief) is entirely apparent at the SOOJ application stage and the court may refuse to allow SOOJ on that basis. Nonetheless, one would assume that this would only be so in the most obvious and self-evident of cases. Therefore, although I accept that the absence of extraterritoriality may in theory result in the rejection of a SOOJ application, I am also unable to say that a SOOJ applicant must positively prove extraterritoriality (in the sense of meeting the legal burden of doing so) in seeking approval for SOOJ. Accordingly, the failure to do so cannot be immediately fatal to the SOOJ application.

41 Finally, I return to the concerns on extraterritoriality on the facts of the present case. As a matter of statutory construction, either the IRDA Provisions confer power upon a court to make orders against a foreign defendant, or they do not. Therefore, in any event and as the Respondents note, it is almost certain that the Singapore court has the power to grant the reliefs sought in OA 945 as there are several decisions where the Singapore courts have applied the relevant IRDA Provisions against foreign defendants (see, for example, *SW Trustees Pte Ltd v Teodros Ashenafi Tesemma* [2025] 3 SLR 1027).[51] It is doubtful that such cases were wrongly decided and the court exercised powers that it simply did not have and that were not conferred to it by statute. The Appellants are unable to point to anything that confirms that the Singapore court has no power under the IRDA Provisions to make any orders where foreign defendants or foreign elements are involved. This is somewhat telling given the significant corpus of cases in the Singapore courts involving the application of the IRDA Provisions (or their equivalent predecessor statutes) to foreign entities (see also, purely as

[51] RS at para 21.

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illustrative examples, *Affert Resources Pte Ltd v Industries Chimiques du Senegal* [2025] 1 SLR 649 and *Azero Investments SA v Velstra Pte Ltd and another appeal* [2005] 4 SLR(R) 792).

42 More importantly, apart from the identity of PKUF Commodities as a foreign defendant, I am of the tentative view that the dispute and reliefs claimed in OA 945 would simply not give rise to any extraterritoriality concerns. Where there are objections regarding the extraterritorial reach of Singapore laws, I observe that the courts in these cases are generally concerned when the relief sought effectively amounts to the use of Singapore law to regulate conduct, property, or proceedings in foreign jurisdictions. The two aspects of the presumption against extraterritoriality in the conflict of laws context reflects this: first, "as a matter of private international law, the presumption is that *the statutory provision only applies if the relevant connecting factor points to the law of the forum as the law governing the issue*"; and second, the statute "is presumably *only intended to affect activities occurring within the territory of the forum, or to activities abroad of nationals of the forum*" [emphasis added] (*JIO Minerals FZC v Mineral Enterprises Ltd* [2011] 1 SLR 391 at [98], citing *Halsbury's Laws of Singapore* vol 6(2) (LexisNexis, 2009) at para 75.292). For example, in *Pacific Andes*, the applicants sought, under Singapore legislation, an exercise of the Singapore court's power to restrain the commencement or continuation of proceedings outside of Singapore (at [15]). Apart from the court's conclusion that the relevant provision the applicants relied on could not be construed as conferring extra-territorial jurisdiction, the court also took the view that the question of whether a stay of proceedings elsewhere ought to be granted to facilitate a restructuring under a scheme of arrangement in Singapore was a matter for consideration by the court where those proceedings were being

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brought (at [20]). It is in such contexts that extraterritoriality concerns arise in respect of the reliefs claimed.

43 In my view, no such extraterritorial, international comity, or conflict of laws-related concerns arise in the present case. In OA 945, the relief sought by the Respondents is the setting aside of the Agreement under the IRDA Provisions, which are effectively statutory clawback and/or avoidance provisions in the context of insolvency proceedings in Singapore. Admittedly, PKUF Commodities, as the other party to the Agreement, is a foreign defendant, and the Agreement and the circumstances under which it was entered into have certain connections to the PRC (which I shall elaborate upon later). However, the relief sought in OA 945 is not, in my tentative view, a regulation of activity in a foreign territory. The claims are brought by the Liquidators of SG JHC, whose liquidation is being overseen by the Singapore courts. Seen in this light, the statutory avoidance and/or clawback claims are more appropriately characterised as regulating the effect of foreign activity on a Singapore insolvent estate and not regulating any foreign activity itself. Ultimately, the Liquidators' concern in OA 945 is the (apparent) diminution of SG JHC's available assets in the context of its liquidation. The IRDA Provisions would thus operate within Singapore's territorial sphere, in the context of overseeing the liquidation of SG JHC.

44 In addition, the merits of the arguments must be viewed through the prism of Singapore's insolvency framework. If indeed extraterritorial concerns can arise in a case like the present, it would, in my judgment, drive a coach and horses through our insolvency regime. Regardless of the parties' reasons for structuring the Agreement as they did, I do not think the foreign characteristics they chose to attach to it (such as PRC governing law) can *ipso facto* convert what is fundamentally the disposition of a Singaporean company's Singapore

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receivable into an extraterritorial matter for the purposes of a liquidator's subsequent statutory avoidance claim. Otherwise, parties dealing with a Singapore company could, through the very architecture of a transaction later alleged to constitute an unfair preference or transaction at an undervalue, materially determine the territorial reach of Singapore's avoidance regime. By the same token, the mere fact that an otherwise local debt is sold to a party outside the jurisdiction surely cannot, on its own, render that debt "extraterritorial" and thereby place it beyond the reach of Singapore proceedings; to hold otherwise would give rise to obvious forum shopping concerns and reduce the domestic insolvency regime to a paper tiger.

45 To recapitulate, addressing extraterritoriality in a SOOJ application is plainly not a requirement in law. Once the relevant requirements under the ROC 2021 and the SCPD 2021 were met, the Respondents were entitled to the SOOJ Order. To the extent that extraterritoriality, properly understood, is relevant to whether there is a serious question to be tried on the merits of the claim, such an inquiry is, at its highest, only part of the wider considerations as to whether the Singapore court is the appropriate court to hear the action. Any failure to establish the extraterritorial reach of the IRDA provisions to PKUF Commodities in the SOOJ application (by way of meeting a legal burden of doing so) is thus not fatal to the SOOJ Order. In any event, there is nothing to suggest that the IRDA Provisions would not be able to be applied in OA 945 notwithstanding PKUF Commodities being a foreign defendant and the existence of certain foreign elements related to the Agreement. As a matter of law, the Appellants' contentions in relation to Issue 1 are, overall, untenable. Therefore, the SOOJ order should not be set aside on the basis that the Respondents failed to show that PKUF Commodities is sufficiently connected to Singapore for the reliefs sought in OA 945.

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46 Despite my conclusions on Issue 1, it is not clear yet at this juncture whether the SOOJ Order should be set aside. As I alluded to at [21] above, the Appellants emphasised at the hearing that the main question for the court to consider is whether Singapore or the PRC is the proper forum to resolve the dispute in OA 945. This was because the court must still be satisfied that Singapore is the *forum conveniens* (as per para 63(2)(*b*) of the SCPD 2021) to hear OA 945.[52] The Appellants referred to *Zoom Communications Ltd v Broadcast Solutions Pte Ltd* [2014] 4 SLR 500 ("*Zoom Communications*"), where the Court of Appeal explained that the existence of the Singapore courts' jurisdiction may be challenged on the grounds that Singapore is not the proper forum (and thus, that one of the requirements for valid service out of jurisdiction has not been satisfied) (at [75]). This is the Appellants' remaining argument on the setting aside of the SOOJ Order. The court in *Zoom Communications* also explained that the burden of showing that Singapore is the proper forum remains with the applicant for approval of SOOJ, whether at the stage of making its *ex parte* SOOJ application or at the *inter partes* stage if the foreign defendant, having been served, makes a challenge to the existence of the Singapore courts' jurisdiction on the grounds that Singapore is not the proper forum (at [75]). The substance of the *Spiliada* test does not differ regardless of whether the inquiry on the proper forum takes place as part of a challenge to the existence of the local court's jurisdiction, or as part of an application for a stay of proceedings on improper forum grounds (at [77]).[53] Therefore, the court in the present appeal need only be concerned with whether Singapore is the proper forum to hear OA 945. This would determine both the applications to set aside the SOOJ Order and for a stay of OA 945.

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52 Transcript at p 3 ln 29–p 4 ln 10; p 22 ln 28–p 23 ln 26; and p 27, ln 13–16.

53 Transcript at p 27, ln 13–16.

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47 Additionally, the court in *Zoom Communications* explained that if the proper forum test in substance does not differ according to the nature of the application – whether to set aside a SOOJ order or for a stay of proceedings on improper forum grounds – then a foreign defendant who makes both such applications may find that the fall-back stay application is pointless (at [78]). Therefore, it is "wholly unnecessary and likely counter-productive for a foreign defendant who does not wish to have his dispute with the plaintiff tried in the local court to make both a jurisdictional challenge and a stay application based *on the same material*" [emphasis in original] (at [79]). It appears to me that the Appellants have run their case in precisely such a manner. Indeed, they appear to have acknowledged this at the hearing.[54] As the Appellants run their case for both the setting aside of the SOOJ Order and the stay of OA 945 on the same proper forum grounds, the court need only be concerned with the *Spiliada* test in substance. However, if I find in favour of the Appellants on the application of the *Spiliada* test, their stay application is pointless. On the flipside, if I find in favour of the Respondents on the application of the *Spiliada* test, both the Appellants' applications for a setting aside of the SOOJ Order and a stay must fail.

Analysis of Issue 2

48 I next turn to address whether PKUF Commodities' POD filing in SG JHC's estate amounts to a submission to jurisdiction. Before delving into this issue proper, I make some preliminary observations on submission to jurisdiction in the context of jurisdiction as per s 16(1) of the SCJA and how the parties have run their cases.

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[54] Transcript at p 22 ln 28–31.

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49 Where there is a submission to jurisdiction, as per s 16(1)(*b*) of the SCJA, the court has *in personam* jurisdiction over the foreign defendant in that action – *ie*, the existence of jurisdiction is established. This is separate from the existence of jurisdiction that is established pursuant to proper service of an originating claim or process under s 16(1)(*a*) of the SCJA and is therefore also unrelated to the setting aside of the SOOJ Order here. A submission to jurisdiction can also be relevant as part of the requirement of a "sufficient nexus" under para 63(2)(*a*) of the SCPD 2021 – the supporting affidavit can show that "the claim is in respect of matters in which the defendant has submitted or agreed to submit to the jurisdiction of the Court" (see para 63(3)(*r*) of the SCPD 2021). However, it does not appear that this was relied on at the SOOJ application stage here.

50 The Appellants now suggest that the Respondents' arguments on the POD filing at this stage of the proceedings are an "afterthought" as it was not addressed when applying for SOOJ.[55] However, this does not go very far in assisting the Appellants' position. First, proving submission to jurisdiction was not a necessary requirement for the SOOJ application to be granted and the Respondents thus cannot be faulted for not addressing the POD filing then.

51 Second, now that the POD filing argument has been raised, if indeed the POD filing amounts to a submission within the meaning of s 16(1)(*b*) of the SCJA, it would appear to me that the Appellants can no longer advance any challenge to the existence of the Singapore courts' jurisdiction. As I explained earlier, having dealt with Issue 1, the Appellants' sole surviving basis for the setting aside of the SOOJ Order is on proper forum grounds (see [47] above). Therefore, even though the Appellants' challenge to the *existence* of the

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55 AS at para 51.

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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 has not been satisfied under s 16(1)(*a*)(ii) of the SCJA) (see *Zoom Communications* at [75]) technically remains alive, there would be no practical or meaningful outcome to this challenge if the conclusion on Issue 2 is that *existence* of jurisdiction is separately established by submission to jurisdiction under s 16(1)(*b*) of the SCJA. Nevertheless, I accept that the proper forum question would still be relevant to whether the court should exercise its jurisdiction in OA 945 – a matter I shall return to when discussing Issues 3 and 4.[56]

52 I now return to Issue 2 proper. It is clear from the case authorities considered by the AR that a POD filing can and have been found to amount to a submission to the jurisdiction of the court supervising that liquidation. In *Manharlal Trikamdas Mody v Sumikin Bussan International (HK) Limited* [2014] SGHC 123 ("*Manharlal*"), the court, affirming *Rubin* at [165], agreed 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" (at [123]).

53 The Appellants do not disagree with this prevailing position in law. Instead, their contention appears to be that a POD filing does not, *ipso facto*, always amount to a submission to jurisdiction. They argue that certain circumstances in the present case suggest that PKUF Commodities' POD filing should not be taken as a submission to jurisdiction. Indeed, whether a defendant's conduct amounts to a submission to jurisdiction is a question of fact in each case (*Zoom Communications* at [32]). The general proposition is that a

[56] See also Transcript at p 28 ln 16–19; and p 35, ln 1–7.

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party's conduct constitutes submission to jurisdiction if it demonstrates an unequivocal, clear and consistent intention to submit to the jurisdiction of the court (*Carona Holdings Pte Ltd v Go Go Delicacy Pte Ltd* [2008] 4 SLR(R) 460 at [99]; *Shanghai Turbo Enterprises Ltd v Liu Ming* [2019] 1 SLR 779 ("*Shanghai Turbo*") at [37]). In *Reputation Administration Service Pte Ltd v Spamhaus Technology Ltd* [2021] 2 SLR 342 ("*Spamhaus*"), the Court of Appeal also clarified that a submission to jurisdiction is established where a party has taken a "step" that is incompatible with the position that the Singapore court *does not have* jurisdiction (at [20(a)]).

54 I turn to consider the various circumstances raised by the Appellants that are supposedly unique in the present case.

55 First, the Appellants point to the fact that there has been no adjudication, no action taken by or required from the creditor (PKUF Commodities), and no distribution of dividends here. This is unlike the facts of *Ex p Robertson; In re Morton* (1875) LR 20 Eq 733 referred to in *Rubin*, where the POD had in fact been adjudicated on and dividends received. The Appellants thus argue, relying on Professor Adrian Briggs' criticism of *Rubin* in Adrian Briggs, "Rubin and New Cap: Foreign Judgments and Insolvency", 2013 Jones Day Professorship of Commercial Law Lecture, Singapore (10 April 2013), that the mere filing of a POD amounts to submission before any creditor action, adjudication, or distribution would be too absolute and premature.[57] In my view, the Appellants' contention is beside the point. As I will explain below, I accept that a POD filing would not *invariably* amount to a submission to jurisdiction in every circumstance as each case must be decided on its facts. The concerns, in principle, about any absoluteness or prematurity with finding that a POD filing

[57] AS at paras 41–44.

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amounts to submission therefore fall away. In my judgment, the court should nevertheless consider whether the POD filing demonstrates an unequivocal, clear and consistent intention to submit to the jurisdiction of the court on the facts and circumstances of each case.

56 In this regard, the nature of a POD filing in and of itself is key to the inquiry. I say so because even reservations as to a right to challenge a court's jurisdiction, and even the filing of a jurisdiction challenge or a stay application itself, may not suffice to defend an allegation that a defendant has submitted to jurisdiction if it is fundamentally inconsistent with the *nature* of the defendant's acts (*Shanghai Turbo* at [38]–[39]). In this regard, I agree with the Privy Council's view in *Stichting Shell Pensioenfonds v Krys* [2014] UKPC 41 that whether proof is subsequently admitted or a dividend paid "cannot make any difference to the character of" the filing of a POD (at [31]). Relatedly, I agree with the AR's observations that a POD filing is a legally significant step as it gives the creditor the right to have his debt adjudicated, to participate in any distribution out of the insolvent estate, challenge any debt adjudication outcomes, and to vote at the first creditors' meeting of a company in judicial management (GD at [65]). Whether these events have occurred or not does not alter the nature of a POD filing. In my view, PKUF Commodities' POD filing would at the very least be a clear and unequivocal intention to submit to the Singapore court's jurisdiction over the adjudication of that debt. There would be no other reason for a POD filing – a party's act would amount to submission to jurisdiction where it "cannot be explained, except on the assumption that the party in question accepts that the court should be given jurisdiction" (see *Shanghai Turbo* at [37], citing *Global Multimedia International Ltd v Ara Media Services* [2007] 1 All ER (Comm) 1160 at [27]).

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57 Second, and proceeding from the above, an argument may be made that a submission to the court's jurisdiction over adjudication of a debt cannot be extended to a submission to jurisdiction in relation to all subsequent proceedings or disputes related to that debt. Indeed, PKUF Commodities' POD filing took place nearly two years before OA 945 was commenced. In this connection, I take guidance from the court's observations in *Giant Light Metal Technology (Kunshan) Co Ltd v Aksa Far East Pte Ltd* [2014] 2 SLR 545 ("*Giant Light Metal*") regarding a principle of "inchoate submission", where courts are willing to recognise that a party's consent to the jurisdiction of a foreign court in relation to certain claims may be imputed to further claims in some circumstances, including claims brought pursuant to subsequent and separate proceedings in respect of the same parties (at [48]). Additionally, in assessing whether submission to one proceeding should be imputed to another, the court should be informed by concerns of fairness to both the plaintiff and the defendant, and a desire to disregard technical impediments created by procedural rules under both foreign and forum law (at [49]). This principle of inchoate submission was applied in *Sapura Fabrication Sdn Bhd v GAS* [2025] 1 SLR 492. There, the Court of Appeal found that a submission to jurisdiction in an earlier reorganisation proceeding could be imputed to subsequent reorganisation proceedings, which were properly characterised as mere extensions of time to complete the original proof of debt exercise (at [51] and [53]–[55]). Taking these observations into consideration, in my view, there is a sufficient (indeed, obvious) nexus between PKUF Commodities' POD filing and the dispute in OA 945 to warrant imputing a submission to jurisdiction in relation to the adjudication of PKUF Commodities' debt to OA 945. To my mind, the circumstances surrounding the Agreement are intimately connected with the adjudication of any debt owed by SG JHC to PKUF Commodities. It was precisely the result of the Agreement that PKUF Commodities' debt was

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reduced by US$26.02m to US$15.25m, and it was on this basis that PKUF Commodities then filed its POD for a debt of US$15.25m. There is also no unfairness with imputing the submission to jurisdiction to OA 945 as one would think that the parties involved are all invested in determining the true debts owed by SG JHC, whose liquidation is ultimately supervised by the Singapore court. There is thus ample basis to find that the submission to jurisdiction in the POD filing should be extended to submission to jurisdiction in OA 945.

58 Third, the Appellants submit that the equation of a POD filing with a submission to jurisdiction is rooted in a rationale of equal bargain as a creditor "should not be allowed to benefit from the insolvency proceeding without the burden of complying with the orders made in that proceeding" (*Rubin* at [167]). The Appellants argue that PKUF Commodities does not stand to gain anything from its POD filing as its debt of US$15.25m has been sold to Mr Cai. In fact, it is suggested that PKUF Commodities may not even be a creditor anymore.[58] As a matter of principle, I do not disagree with the rationale of equal bargain in finding that a POD filing amounts to a submission to jurisdiction. However, as would be clear from what is discussed above, the absence of a benefit to PKUF Commodities in the Singapore insolvency proceedings alone is not conclusive in the largely factual inquiry, although it may be a factor that the court takes into consideration. I must still consider whether the POD filing, by its nature, should be taken as a submission to the Singapore court's jurisdiction as to the adjudication of its debt, and whether any such submission should be extended to the related, subsequent proceedings in OA 945 – and, as can be seen above, I have answered both these queries in the positive. Further, the sale of the debt occurred around a year after the filing of the POD, and as I earlier explained, subsequent events do not alter the nature of the act of filing a POD. Before me,

[58] AS at paras 48–50.

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counsel for the Appellants highlighted that PKUF Commodities' POD filing was "superseded" by Mr Cai's POD filing, and that a superseded POD filing was similar to a withdrawn POD filing.[59] If the Appellants were suggesting that PKUF Commodities was indeed no longer interested in the adjudication of its debt, I can only observe that there was no attempt to state so in clear terms. Further, PKUF Commodities has not in fact withdrawn its POD filing; nor does it indicate that it intends to do so. The circumstances surrounding the sale of PKUF Commodities' debt to Mr Cai are also somewhat opaque, as observed by the AR (GD at [8]). Upon my query, counsel for the Appellants was unable to provide further information on the identity of Mr Cai, nor whether or how he was connected to the parties.[60] Taking those circumstances in the round, in my view, PKUF Commodities should be taken as continuing to be interested in having the Singaporean courts supervising the adjudication of its debt, if any.

59 Fourth, as I alluded to earlier at [50] above, the Appellants suggest that at the time of the SOOJ application, the Respondents themselves did not consider that PKUF Commodities had submitted to jurisdiction by its POD filing, and any arguments made in SUM 1656 and in the present appeal pertaining to submission to jurisdiction are thus an afterthought.[61] It is difficult to see how the Respondents' views on the significance of the POD filing at the time of the SOOJ application is at all relevant to the question, now, of whether it can indeed amount to a submission to jurisdiction. PKUF Commodities' submission to jurisdiction was certainly not a requirement in the SOOJ application. Even if the Respondents' arguments on submission to jurisdiction are an afterthought, this does not impact the court's analysis on the facts.

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59 Transcript at p 9 ln 11–15 and ln 21–28.

60 Transcript at p 9 ln 16–19.

61 AS at 51.

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60 To conclude, I am of the view that PKUF Commodities' POD filing in the present case amounts to a submission to the Singapore court's jurisdiction over adjudication of its debt, and this can be imputed to the dispute in OA 945 as the two are sufficiently related. As I explained above at [51], the effect of this conclusion is that the court has *in personam* jurisdiction over PKUF Commodities as per s 16(1)(*b*) of the SCJA. Therefore, while I shall still proceed to consider the proper forum question below to determine whether the court should exercise its jurisdiction in OA 945, the setting aside of the SOOJ Order is now somewhat redundant as the existence of jurisdiction in OA 945 can no longer be disputed.

Analysis of Issue 3

61 I next turn to Issue 3. The Appellants submit that PKUF Commodities' POD filing does not amount to a waiver of the challenge of *exercise* of jurisdiction on *forum non conveniens* grounds, even if the POD filing can amount to a submission to jurisdiction in the sense that *existence* of jurisdiction is not contested.[62] A distinction must be drawn between the existence of jurisdiction and the exercise of jurisdiction in so far as *forum non conveniens* is a factor for the court's consideration. As I explained above, this understanding is correct. The effect of this is that if I find Issue 3 in favour of the Respondents, the Appellants would not be allowed to make any jurisdictional challenge on *forum non conveniens* grounds. Both the Appellants' setting aside and stay applications would have to fail as their only surviving argument for both is on the proper forum question.

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62 AS at paras 52–54.

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62 I turn now to the legal authorities raised by the Appellants in support of its position that the POD filing is not a waiver. The Appellants rely on *Akers v Deputy Commissioner of Taxation* [2014] FCAFC 57 ("*Akers*"), where the court held that there is no principle that "by the minimum act of submission to the foreign court supervising the foreign main proceeding, such as by the submission of a proof of debt, exclusive jurisdiction is placed in the hands of that court in respect of all possible issues concerning the insolvency, or that the local creditor becomes disentitled to make an application of the kind with which the court is concerned" (at [165]). In my view, *Akers* does not assist the Appellants' case. To begin with, there is little to argue with the proposition that a submission to jurisdiction is not the same as exclusive jurisdiction. Whether the Singapore court has exclusive jurisdiction is not a live issue in this appeal. Further, the court in *Akers* did not consider whether a submission to jurisdiction amounts to a waiver of the challenge of exercise of jurisdiction on *forum non conveniens* grounds. The court there was instead concerned with whether the filing of a POD disentitled the applicants from applying to modify the terms of the orders made by the primary judge recognising that the liquidation of the defendant in the Cayman Islands was a foreign main proceeding pursuant to Art 17 of the UNCITRAL Model Law on Cross Border Insolvency 1997 (at [18]–[24]). Such an application is quite unlike a challenge to exercise of jurisdiction on *forum non conveniens* grounds. It is also of note that the court in *Akers* was prepared to accept that "formal submission of a proof of debt to the insolvency administration [would] generally be adequate to support a conclusion that the court supervising the administration thereafter has jurisdiction to make orders in matters connected with the administration against the creditor who has proved" (at [165]). This is consistent with the AR's reasoning in extending the logic in the authorities that if the supervising court had sufficient basis to make orders against a foreign creditor because it had filed

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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) (GD at [78]). *Akers* thus does not appear to support the Appellants' contentions.

63 Similarly, the Appellants' reference to *Tucker v Mongbwalu Goldfields Investments Ltd* [2021] FCA 135 (at [23]), where the Federal Court of Australia recognised the distinction "between the enlivening of jurisdiction upon proving in an administration, and a situation where a single forum assumes exclusive jurisdiction over such matters" is not of assistance here, where the question of whether the Singapore courts have exclusive jurisdiction is simply not engaged. Again, it can hardly be disputed that existence of jurisdiction is not equivalent to exclusive jurisdiction.

64 Proceeding from this, it appears that the Appellants do not raise any case authorities supporting the specific proposition that a POD filing does not amount to a waiver of the challenge of *exercise* of jurisdiction on *forum non conveniens* grounds. In this regard, the Appellants contend, by analogy, that if the filing of a defence in a suit in the Singapore courts does not bar a defendant from applying for a stay on the ground of *forum non conveniens*, *a fortiori*, a POD filing before notice of any subsequent claims should not bar a challenge as to the exercise of jurisdiction on *forum non conveniens* grounds.[63] The Appellants cite *Chan Chin Cheung v Chan Fatt Cheung* [2010] 1 SLR 1192 ("*Chan Chin Cheung*") at [22], where the court held that while the filing of a defence on the merits in a suit in Singapore would disentitle the defendants from contesting that Singapore has no jurisdiction to hear the case, it would not bar them from applying for a stay on the ground of *forum non conveniens*. It is

[63] AS at paras 58–59.

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important to note that this finding in *Chan Chin Cheung* should not be taken as a general proposition. As explained in *Exchange Union Co and others v Wo Qi* [2026] SGHC 124 ("*Exchange Union*") (at [61]–[63]), it is possible that the court in *Chan Chin Cheung*, then applying the ROC 2014 where there was no provision to file a defence limited to challenging jurisdiction (unlike as provided for in O 2 r 5(3) of the ROC 2021), had greater room to consider that the filing of a defence on the merits did not signify a position that the Singapore court *should* assume jurisdiction. Indeed, as held in *Spamhaus* (at [23]), the ordinary implication of filing a defence on the merits is an acceptance that the Singapore court *should* try the action (*Exchange Union* at [60]).

65 That said, I agree with the Appellants' broader conceptual point, namely, that a clear distinction has to be drawn between a challenge as to the existence of jurisdiction and the exercise of jurisdiction. Consequently, I would respectfully disagree with the AR's observation that it would be arbitrary to draw a line between the two (GD at [78]). In coming to this view, I also consider the observations made in *Tao Commodity Trader Inc v Fortis Bank (Nederland) N.V.* [2004] SGHC 30 (at [35]) that "'jurisdiction proper means a concern with matters that go to jurisdiction, the lack of which vitiates it, whereas power connotes matters which affect the *exercise* of jurisdiction" [emphasis added]. Therefore, the matter of whether the court should (exercise its power or jurisdiction to) hear a case is altogether separate from whether the court has "jurisdiction proper". This distinction also reflects what is said above regarding the distinction between extraterritoriality, which pertains to exercise of the court's power to grant relief, and jurisdiction, which concerns the court's authority to hear an action. Therefore, to reframe the Appellants' contention, I agree in principle that an acceptance that the court *has* the authority to hear a certain dispute is distinct from and cannot be immediately extended to an

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acceptance that the court *should* exercise its power (or assume jurisdiction) to hear the case.

66 In *Spamhaus*, the Court of Appeal drew clear distinctions between the two. A submission to jurisdiction is established where a party has taken a "step" that is incompatible with the position that the Singapore court *does not have* jurisdiction (at [20(a)]). A waiver as to a jurisdictional challenge 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, such as where such party takes a step demonstrating a clear intention to have the dispute determined by the Singapore court (at [20(b)]). As *Spamhaus* was decided in the context of a stay application based on an EJC, I note that the court in *Exchange Union* was somewhat concerned with whether the *Spamhaus* test for a waiver was applicable in the context, there, of a waiver of a right to apply for a *forum non conveniens* stay where there was no EJC (*Exchange Union* at [55]), which is a similar situation to the present case. As per the court's well-reasoned analysis, I agree that the *Spamhaus* test for a waiver, which is framed "with broad reference to a defendant having acted contrary to the position that the Singapore court should not exercise its jurisdiction in the action", is equally applicable here (see *Exchange Union* at [48]–[56]). A waiver of the right to object to the court's exercise of jurisdiction on *forum non conveniens* grounds is thus found where the defendant "has taken steps demonstrating a clear, unequivocal and consistent intention to have the dispute determined by the Singapore court" (*Exchange Union* at [56]).

67 The more important point to be made in this appeal is not a controversial one: the different tests for a submission and a waiver again reflect a distinction between drawn between the existence and the (discretionary) exercise of jurisdiction. This distinction itself lends credence to my finding that the AR may

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not have been correct to conclude that a "waiver of a jurisdictional challenge" applies to both the existence and exercise of jurisdiction and that a submission to jurisdiction extended to both. It is clear that contesting the *exercise* of jurisdiction, being whether the court *should* exercise its power to hear a matter (or, put another way, whether the court *should* assume jurisdiction), must be kept separate from the anterior question of whether the party has accepted the court's authority to hear the matter (*ie*, a submission to jurisdiction "proper"). In my view therefore, a submission to jurisdiction "proper" in the sense of an acceptance that the court *has* the authority to hear the dispute cannot automatically mean that the party waived its right to challenge jurisdiction in the sense that the party also accepts that the court *should* assume jurisdiction to hear the dispute. I note that the AR also had regard to the different tests for a submission and a waiver as set out in *Spamhaus*, but was "prepared to extend the logic in *Manharlal* and *Stichting* and accept … 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)" (see GD at [78]). While this logic is at first blush seductive, I am unable to agree. The test for a waiver is whether the defendant took a "step" that is incompatible with the position that the Singapore court *should not assume* jurisdiction over the matter. It is also a fact-specific inquiry. Even if other courts have made orders against a foreign creditor because it had filed a POD, that would not necessarily mean that the POD filing amounted to a waiver of the right to challenge the exercise of jurisdiction on those facts (especially if no such issue was ever raised, and hence, considered, by the court). In this regard, I am not prepared to say that if a POD filing amounts to a submission to jurisdiction on a particular set of facts, it must necessarily extend to a waiver of the sort described on the same set of

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facts. Ultimately, the question of whether a party accepted that the court *has* authority to hear a case is different from whether the party has accepted that the court *should* hear the case.

68 Proceeding from this, I see force in the Appellants' *a fortiori* argument (see [64] above). If filing a defence on the merits does not automatically bar a defendant from contesting the exercise of jurisdiction, *a fortiori*, an act such as a POD filing which takes place even *before* a party even has notice of the claims of the dispute should not disentitle that party from objecting to the exercise of jurisdiction. This logic implicitly captures the definition of a waiver by election – a "*voluntary or intentional relinquishment of a known right, claim or privilege*"; a party must therefore "be aware of the facts which have given rise to the existence of the right he is said to have elected not to exercise" [emphasis in original] (*Exchange Union* at [48], citing *Audi Construction Pte Ltd v Kian Hiap Construction Pte Ltd* [2018] 1 SLR 317 at [54]). Here, and as was also the case in *Exchange Union* (see [50]), the relevant "right" is the right to object on proper forum grounds to the court's exercise of jurisdiction in the proceedings. The proper forum question (being the *Spiliada* test in substance) envisions a multi-factorial analysis taking into account considerations such as the connections of witnesses, connections to relevant events and transactions, and the applicable law. The facts which have given rise to the right to object on proper forum grounds must therefore also be the same facts which can answer the proper forum question. These facts must thus also be related to the substance, shape, and nature of the *dispute* in the proceedings itself. In principle therefore, it is difficult to see how an act (such as a POD filing) taking place *before* a claim is even commenced can be taken as a voluntary or intentional relinquishment of a right to object to the exercise of jurisdiction on proper forum

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grounds. The party may not even have had any idea that there would be any dispute arising in connection with that act at the time.

69 Nevertheless, I have concluded that PKUF Commodities' POD filing amounts to a clear and unequivocal intention to submit to the Singapore court's jurisdiction over adjudication of that debt, which is connected to the dispute in OA 945 (at [56] above). A question arises as to the implications of this finding on whether PKUF Commodities has also thereby accepted that the Singapore court *should* hear the dispute in OA 945. I shall begin by considering if the insolvency context has any bearing on the matters of jurisdiction here. At the hearing, the Respondents suggested that in a cross-border insolvency context, the forum overseeing the liquidation is paramount and that it is only natural for claims arising in the liquidation to be prosecuted in that forum.[64] While I *generally* agree with this, as I alluded to at the hearing, that does not mean that the forum overseeing the jurisdiction is the only jurisdiction capable of or most suited to hear any and all disputes arising from a creditor's debt.[65] Otherwise, a party such as PKUF Commodities would be in an impossible position. It has a debt owed by a Singapore company wound up in Singapore and would have had no choice but to file a POD to have any prospect of getting repaid. If a POD filing amounted to a waiver of all rights to contest the exercise of jurisdiction on *forum non conveniens* grounds for claims arising later, one can imagine a dispute involving a completely foreign transaction and with no connections to Singapore. It would be odd if the conclusion is that Singapore is (by law) the only forum that can hear the dispute even accepting that it is where the determination of any debt is to be done.[66] When questioned about this at the

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64 Transcript at p 53 ln 1–p 54 ln 10; and p 55 ln 22–p 56 ln 13.

65 Transcript at p 54 ln 16–p 55 ln 10.

66 Transcript at p 50 ln 31–p 51 ln 11.

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hearing, the Respondents in fact suggested that liquidators themselves would not necessarily be bound to prosecute their claims in the forum overseeing the insolvency.[67] The implication of this can only be that it is at least plausible for other jurisdictions to hear such matters. Therefore, even taking into account the insolvency context, I do not see any principled reason to accept that a POD filing can indefinitely be taken as an acceptance that the forum overseeing both *has* and *should* assume jurisdiction over subsequent claims, even if those claims are connected to the very debt in the POD filing.

70 At the hearing, counsel eventually agreed that as a matter of principle, a POD filing would not automatically amount to an acceptance that the court supervising the liquidation can and should hear any and every dispute in connection with that debt – the court must still conduct an assessment on the facts as to whether the POD filing amounts to a waiver.[68] However, the Respondents maintained that *on the present facts*, the POD filing would amount to a waiver as the set-off created by it was inextricably linked to that POD filing and therefore, the adjudication of PKUF Commodities' debt.[69]

71 Consequently, I return to the present facts. Having regard to the applicable law as set out above, I do not consider PKUF Commodities' POD filing to be a step that is incompatible with the position that the Singapore court should not assume jurisdiction over OA 945. Nor does it demonstrate a clear, unequivocal and consistent intention to have the dispute in OA 945 be determined by the Singapore court. The POD filing is thus not a waiver as to the right to challenge the exercise of the court's jurisdiction on *forum non*

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67 Transcript at p 53 ln 27–29.

68 Transcript at p 55 ln 3–16.

69 Transcript at p 49 ln 16–27; and p 55 ln 19–20.

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conveniens grounds, or otherwise. The Respondents' position in this regard goes too far. It entails extending PKUF Commodities' intention to have its debt adjudicated under the supervision of the Singapore court (by virtue of the POD filing) to an acceptance that the dispute in OA 945 is most properly to be heard by the Singapore court. The Respondents' suggestion appeared to stem from an understanding that a POD filing is intimately connected with the creditor's interest in adjudication of that debt by the forum supervising the liquidation.[70] While I earlier concluded in respect of Issue 2 that there is a sufficient nexus between PKUF Commodities' POD filing and the dispute in OA 945 to warrant imputing a submission to jurisdiction in relation to the adjudication of PKUF Commodities' debt to OA 945, I clarify that this only goes to whether there was a submission to jurisdiction "proper" in the sense that the Appellants should be taken as accepting that the Singapore court *has* authority to hear the dispute in OA 945. The inquiry here, whether the Appellants can be taken as accepting that the court *should* exercise its power to hear the dispute in OA 945, is a different one. On the facts, I am unable to say that PKUF Commodities' POD filing evinced a clear intention that the Singapore court *should* hear OA 945, let alone on the grounds that Singapore is the most appropriate forum to try the dispute in OA 945. As I explained above at [68], quite apart from a creditor's interest in the adjudication of its debt, it is the substance, shape, and nature of the *dispute* in the claim (even if connected to the debt adjudication) that is of paramount consideration. Here, the substance of the dispute in OA 945 pertains to the circumstances under which the Agreement was entered into. At the time of the POD filing, assuming all of this was done on an arms' length basis and there was nothing untoward about the Agreement or the sale of the debt to Mr Cai (and, to be clear, I make no such findings since there is simply too little

[70] Transcript at p 48 ln 7–17.

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information before me to conclude whether either contractual arrangement had been made *bona fides* or otherwise), it may be that the Appellants did not know that the OA 945 claims in relation to the Agreement would even arise, let alone that there would be any *forum non conveniens* concerns with such a dispute. In other words, it is possible that the Appellants never envisioned any dispute at all to arise in the circumstances, even if I accept that at the end of the day, OA 945 is connected to the adjudication of PKUF Commodities' debt. Further, there is some legitimate basis to believe that the dispute pertaining to the Agreement could, and perhaps even more appropriately, be determined by the PRC court as seen in how the parties presently accept that the PRC is an available forum (see [76] below). In the circumstances, I do not think it is fair to say that, merely by its POD filing, PKUF Commodities waived its right to argue that Singapore is not the proper forum to hear the dispute in OA 945. Seen in this light, the POD filing cannot be taken as a "step" that is incompatible with the position that the Singapore court *should not assume* jurisdiction over the dispute in OA 945, and thus cannot amount to a waiver to a jurisdictional challenge on *forum non conveniens* grounds.

72 Therefore, I conclude Issue 3 in favour of the Appellants. That said, this does not go far in assisting the Appellants' case as a whole. All that the decision in respect of Issue 3 means is that the Appellants are allowed to make their case that the Singapore court should not exercise its power to hear OA 945 on *forum non conveniens* grounds. Whether as a challenge to jurisdiction or as a basis to grant a stay of OA 945, it must nevertheless be shown that the PRC court is indeed the more appropriate forum than the Singapore court to try the disputes in OA 945 for the Appellants to succeed in this appeal.

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Analysis of Issue 4

73 Flowing from the above, I finally turn to consider whether Singapore is the proper forum to resolve the dispute in OA 945.

74 I deal first with the preliminary issue of the burden of showing that Singapore is the proper forum. In an ordinary situation, this lies with the applicant for approval of SOOJ, whether at the stage of making its *ex parte* SOOJ application or at the *inter partes* stage if the foreign defendant, having been served, makes a challenge to the existence of the Singapore courts' jurisdiction on the grounds that Singapore is not the proper forum. However, this principle "has no application where the Singapore courts undoubtedly have jurisdiction … because there has been a submission to jurisdiction" (*Zoom Communications* at [75]). Since I have found in respect of Issue 2 that PKUF Commodities' POD filing amounts to a submission to jurisdiction within the meaning of s 16(1)(*b*) of the SCJA, the Appellants can no longer challenge the existence of the Singapore courts' jurisdiction. In these circumstances, it is only fair that the Appellants bear the burden of showing that the PRC court is the clearly more appropriate forum to try the dispute in OA 945 in respect of both the setting aside of the SOOJ on *forum non conveniens grounds* and the seeking of a stay of OA 945 on *forum non conveniens* grounds. Cursorily, I note that there is no need to duplicate the analysis in respect of the SOOJ Order and the stay as the inquiry is the same (see also *Zoom Communications* at [78]–[79]). Further, as a matter of practice, the court will "collapse the issue of the proper forum into one question considered in the round" whatever the onus of proof may be (*Zoom Communications* at [80]). The Appellants recognised this practicality.[71] Separately, I reiterate my observations above at [60] that the

[71] Transcript at p 4 ln 8–10.

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setting aside of the SOOJ is redundant and even if granted, would not advance the Appellants' overall position given my conclusions on Issue 2.

75 I turn now to proper forum inquiry. The two-stage test in *Spiliada* is as follows: 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; (d) the existence of proceedings elsewhere; and (e) the shape of the litigation. Second, 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 (GD at [106]).

Stage one: whether* prima facie*, the PRC court is the more appropriate forum considering the connecting factors

76 At the outset, I note that it is not contested that the PRC is an available forum (see also GD at [107]). I shall thus focus on whether the PRC court is the more appropriate forum for OA 945 to be tried at the first stage of the *Spiliada* test.

77 I shall also have regard to the observations made in *Rappo, Tania v Accent Delight International Ltd* [2017] 2 SLR 265 ("*Rappo*") that the emphasis is on the quality of the connecting factors, rather than the quantity (at [70]). The lodestar for the court is if the connecting factors point to a forum in which the case may be "tried more suitably for the interests of all the parties and for the ends of justice" (at [72]).

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The applicable law

78 In my view, the applicable law to the claims in OA 945 is a strong factor pointing to Singapore as the proper forum. The Appellants' position is that this is a neutral factor as OA 945 is effectively a dispute between PKUF Commodities in liquidation in the PRC and SG JHC in liquidation in Singapore. There should thus be no inclination to favour either jurisdiction's law as the law that governs their relationship. I disagree with such a characterisation of OA 945. As the AR noted, OA 945 concerns statutory claims under Singapore legislation that are vested in Singapore-court appointed Liquidators. Mr Liao's opinion is also that the Liquidators are exercising a liquidator's core power to set aside the Agreement – the Agreement is the object of the challenge but not the source of the right to challenge.[72] Indeed, it is clear that OA 945 does not concern a contractual dispute.

79 In this connection, I deal with the Appellants' argument that if PRC law applies, it is in line with the parties' intentions under the Agreement given the EJC in favour of PRC.[73] Even if Article 5 of the Agreement can be construed as an EJC, it is difficult to see how any weight can be given to the fact that the parties agreed for disputes relating to the Agreement to be resolved by the PRC Courts, applying PRC law.[74] The Liquidators are not party to the Agreement and are therefore not bound by the alleged EJC. Even setting this point aside, I agree with the AR and Mr Liao that Article 5 is not an EJC in favour of the PRC, and that the dispute in OA 945 does not fall within the scope of Article 5 to begin with. Article 5 of the Agreement (translated) reads as follows:

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72 RS at para 60; Expert opinion of Ronghua (Andy) Liao affirmed on 22 January 2026 ("Mr Liao's Opinion") at paras 95 and 104.

73 AS at para 89.

74 AS at para 86.

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> "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."

80 The Appellants rely on Prof Xu's opinion to argue that the latter half of Article 5 should be read as mandating pre-litigation consultation, failing which, the parties shall submit the dispute to the competent PRC court. In other words, the word "may" does not transform the jurisdiction clause into a non-exclusive jurisdiction clause. It instead clarifies that Party A is not obliged to start the suit, but if it does, the dispute must be submitted to the PRC court.[75] Prof Xu's opinion is also grounded in his view that the term "may" is interpreted as the term "shall" under PRC law, and further, that where an apparent jurisdictional agreement is not clearly stipulated to be non-exclusive, the agreement "shall be *presumed* to be an exclusive jurisdiction agreement" [emphasis added].[76] In contrast, Mr Liao's opinion is that PRC judicial practice is not uniform in the interpretation of a jurisdiction clause drafted in permissive terms such as "may" – there are cases that both support and go against Prof Xu's suggestion that "may" is interpreted as "shall".[77] Having considered the experts' evidence, as Mr Liao raised judicial authorities where the term "may" was interpreted by the PRC courts as being permissive, it can at least be said that the term "may" would not *always* be interpreted as having mandatory effect by the PRC courts. I am also not convinced that there is sufficient judicial authority supporting the so-called overarching presumption of exclusivity in respect of jurisdictional

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75 Expert opinion of Xu Yangguang (translated) in Affidavit of Tay Li Ling Daphne dated 11 July 2025 ("Prof Xu's Opinion") at paras 19–22: Agreed Bundle of Documents Vol 2 ("2ABOD") at pp 1020–1022; AS at para 88.

76 Prof Xu's Opinion at paras 19–22: 2ABOD at pp 1020–1022.

77 Mr Liao's Opinion at paras 33–35: 2ABOD at pp 1074–1075.

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agreements across all contracts, as it would appear that Prof Xu relied on a symposium on "Foreign-Related Commercial and Maritime Trials Work of Courts" for the suggested presumption. On balance, I agree with Mr Liao's opinion that the term "may" is to be given its ordinary meaning of being merely permissive, and that Article 5 is therefore, not an EJC.

81 Even if Article 5 can be construed as an EJC, I agree with the AR that the disputes in OA 945 would not seem to fall within its scope. The alleged EJC appears to only be in respect of "disputes arising out of the performance" of the Agreement. Prof Xu suggests that the term "performance" here should be broadly interpreted such that it includes disputes relating to the validity of the contract.[78] I find it difficult to agree with such an interpretation in view of the first half of Article 5, where "validity" and "performance" are specified separately, which suggests that they are to be understood distinctively. I thus agree instead with Mr Liao's opinion that the Agreement suggests that "validity" and "performance" are to be treated as independent matters.[79] Additionally, in so far as the Liquidators are challenging the validity of the Agreement in OA 945, this is not on a contractual basis, but rather, on the basis of the statutory avoidance provisions in the IRDA. As the AR noted, the dispute in OA 945 has nothing to do with the validity of the Agreement as a matter of PRC contract law (GD at [93]).

82 Given my conclusions on the purported EJC, I am unable to give weight to the fact that any application of PRC law to the dispute in OA 945 would be in line with the parties' intentions.

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78 Prof Xu's Opinion at paras 28–29; 2ABOD at pp 1023–1024.

79 Mr Liao's Opinion at paras 38–41: 2ABOD at pp 1075–1076.

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83 Returning to the applicable law to the claims in OA 945, the AR found that both the experts acknowledged the possibility or likelihood that a PRC court would apply PRC law instead of the IRDA, even if it may have been capable of applying the IRDA (GD at [137]). The AR went on to conclude that if PRC law was applicable, the Respondents would face three difficulties: (a) under the PRC's domestic avoidance regime, the Respondents' claim would be time-barred; (b) SG Commodities would not be a party to the action and there could be issues relating to service of documents and the enforceability of any judgment obtained against it; and (c) there was nothing to suggest that the statutory relief provided for in the IRDA Provisions could be sought from the PRC courts. These considerations tilted the balance against the PRC as being a more appropriate forum.

84 While I agree with the outcome arrived at by the AR, I have some reservations with the reasoning employed when considering the applicable law as a connecting factor. The reason why the applicable law is considered a relevant connection in the *Spiliada* analysis is that a court which is called on to apply its own law is better equipped to do so and less likely to err in its application (*Rappo* at [122]). If this is the underlying concern, it seems that the court should first conclude what is indeed the applicable law at hand as the starting point, and from this, then draw the conclusion as to which court is better equipped to apply that law. What the AR appears to have focused on is the likelihood of what would be the applicable law in the PRC and the unfair implications of this being the case on the Respondents to determine which forum was more appropriate. However, if the conclusion was that a PRC court would apply PRC law, while a Singapore court would apply the IRDA (which seems to be the conclusion arrived at by the AR), this would make the applicable

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law a neutral factor as both courts would be equally well-placed to apply their respective laws (*Halsbury's* at para 75.108).

85 In my judgment, there were several circumstances pointing to the likelihood that the IRDA would be applied in a PRC court. I note that neither expert ruled out the possibility that Singapore law would apply in the PRC forum. Mr Liao in fact took the view that if the avoidance actions sought by the Liquidators are properly characterised as an insolvency derivative action and not a general contractual dispute, a PRC court would apply Singapore law as the *lex fori concursus*, *ie*, the law most closely related to the avoidance claim stemming from the Singapore insolvency proceeding.[80] I am inclined to agree with Mr Liao's characterisation of the dispute at hand for the reasons explained at [78] above. In the same vein, I do not accept Prof Xu's conclusion that there is a "high likelihood" that a PRC court would apply PRC law as this was in part based on reasons related to the choice of PRC law in Article 5 of the Agreement.[81] I have explained that the dispute does not the fall within the scope of Article 5 to begin with. Therefore, as there is, in my view, ample basis to conclude that both the Singapore and PRC court would apply Singapore law to determine the dispute, this factor points in favour of Singapore being the more appropriate forum as the Singapore court would be better placed to apply Singapore law.

86 To add, I am not certain that the difficulties faced by the Respondents as identified by the AR (see [83] above) are relevant to the natural forum analysis. In the first stage of the *Spiliada* analysis, the court considers which forum the dispute is more closely connected to. The factors raised by the AR have little to

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80 Mr Liao's Opinion at paras 101–108: 2ABOD at pp 1097–1100.

81 Prof Xu's Opinion at paras 77–81: 2ABOD at pp 1039–1041.

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do with this even if I accept that they may result in unfairness towards to the Respondents. It is also established that difficulties with enforcing a judgment in a foreign forum is not relevant to the *forum conveniens* analysis (see *Welton v Averis* [2026] SGHC 34 at [133]). I am thus not inclined to take into account the factors raised by the AR, although I nevertheless similarly conclude that the applicable law points in favour of Singapore as the more appropriate forum.

The existence of proceedings elsewhere and the shape of the litigation

87 There is little to glean from the factor of proceedings elsewhere as there do not appear to be any such proceedings in the PRC court at this juncture. This is therefore a neutral factor that does not point to either forum.

88 The shape of the litigation concerns the manner in which the claim or defence was pleaded (*Rappo* at [71]). The court may consider the totality of the dispute, including the defendant's answer to the claim (*Twitter Asia Pacific Pte Ltd v Media Matters for America* [2026] SGHC 134 at [174] citing *Qatar Airways Group QCSC v Middle East News FZ LLC* [2020] EWHC 2975 (QB) at [349]). Therefore, it is not entirely clear what the AR meant by taking the absence of proceedings elsewhere into consideration "as part of the shape of the litigation" (GD at [141]). That said, I agree that there are significant related legal proceedings connecting the dispute in OA 945 to Singapore. The Respondents had made other various applications in the Singapore forum directly related to OA 945 such as for permission to commence OA 945, the appointment of solicitors, and approval of the agreement with FGHK to fund the pursuit of OA 945.[82] Importantly, it was on FGHK's application, in the Singapore court, that SG JHC was wound up. Separately, a winding-up action against SG

[82] RS at paras 74–75.

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Commodities was also made in HC/CWU/120/2022, which is presently stayed pending an ongoing arbitration in the PRC. To the extent what the AR intended to mean was that the dispute in OA 945 is inseparable from this backdrop of related proceedings in Singapore such that the dispute had "taken root in the Singapore Courts from as far back as 2022" (GD at [152]), I am inclined to agree. Consequently, I agree with the AR's conclusion that the shape of the litigation was a factor (indeed, a weighty factor) pointing to Singapore as the more appropriate forum. On appeal, it is telling that the Appellants do not advance any arguments disputing the AR's finding in respect of this factor. Indeed, it is hard to deny that the claims in OA 945 are connected to other significant legal proceedings in Singapore.

89 The AR also declined to give much weight to the Appellants' contention that the dispute in OA 945 should be seen against the larger context of the restructuring of the Founder Group as a whole, which was taking place in the PRC (GD at [148]). I agree with the AR that even adopting this view, it does not mean that part of the restructuring could not take place in Singapore. Indeed, SG JHC was in fact wound-up pursuant to Singapore insolvency proceedings. In this regard, I also give weight to the fact that OA 945 being brought by the Liquidators, cannot in any way be divorced from the winding-up of SG JHC, which is supervised by the Singapore courts.

90 In addition, it appears that the parties accept that OA 945 would finally determine the quantum or existence of FGHK's debt. Apart from this, it seems to me that OA 945 would also affect PKUF Commodities' own debt claims as against SG JHC. It can hardly be disputed that PKUF Commodities is itself interested in matters affecting its own claims. On appeal, the Appellants allude to the fact that PKUF Commodities may not even be considered a creditor any longer given its sale of debt to Mr Cai. However, it seems telling that the

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Appellants do not make a clear assertion that PKUF Commodities is now uninterested in any eventual repayment of debt by SG JHC, although, in some sense, this is unsurprising due to the related nature of such a finding with cross-obligations associated with or within the Agreement that may potentially be engaged given the purchase of the debt by Mr Cai. In any event, the fact of the matter is that PKUF Commodities has not withdrawn its POD filing and in the eyes of the law, continues to maintain such an interest in obtaining payment from SG JHC (see [58] above). Therefore, staying OA 945 would defer the determination of not only FGHK's debt, but also PKUF Commodities' own debt, and this would be counter-productive to the interests of all the parties involved.

The personal connections of the parties and witnesses

91 It is not disputed that the personal connections of the parties and witnesses points in favour of the PRC being the proper forum. However, what remains to be determined is the relative weight to be ascribed to this factor.

92 Several of the key witnesses, such as the directors of SG JHC and PKUF Commodities are located in the PRC.[83] Before me, counsel for the Appellants emphasised the importance of a particular witness located in the PRC – the main director of the JHC line of companies – for the resolution of the dispute.[84] In relation to the unfair preference claim in OA 945 that there was an intention to prefer PKUF Commodities over FGHK as a creditor, it was suggested that this director's state of mind was particularly important as to whether he understood PKUF Commodities to be the only creditor of SG JHC at the relevant time.[85] It

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83 AS at para 66.

84 Transcript at p 6 ln 18–20; and p 43 ln 7–10.

85 Transcript at p 11 ln 30–p 12 ln 4; and p 13 ln 2–12.

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was thus argued that the dispute in OA 945 was fact intensive and that substantial weight should be placed on the location of the witnesses and documents.[86]

93 On compellability, the Appellants argue that the AR wrongly concluded that there was little weight to give to the fact that the Singapore court cannot compel the attendance of PRC witnesses as the PRC court likewise has no power to issue a subpoena.[87] The Appellants contend that although the PRC court does not use the "subpoena regime", Mr Liao's own evidence is that the relevant witnesses would nevertheless have a duty to testify as witnesses in civil proceedings under PRC law.[88] The Appellants' argument does not go much further in convincing me to give more weight to the compellability of the witnesses. A duty to testify is not entirely the same as compellability. It appears that the PRC civil courts cannot compel the attendance of a witness as both experts do not suggest otherwise.[89] In any case, in so far as a duty to testify is concerned, the Respondents also argue that the relevant witnesses are or were officers of the relevant companies and would be under a duty to cooperate with the Liquidators under s 243 of the IRDA.[90] In the circumstances, I do not think the compellability of the witnesses points in favour of either forum.

94 On the issue of convenience, the Appellants place great emphasis on the point that there is serious doubt as to whether the PRC witnesses can testify by

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86 Transcript at p 14 ln 16–17.

87 AS at paras 68–69.

88 AS at paras 69.

89 RS at para 65.

90 RS at para 63.

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virtual means in Singapore proceedings.[91] In particular, they rely on Prof Xu's opinion that Singapore courts are prohibited from conducting investigations or collecting evidence directly within the territory of the PRC and that foreign judicial authorities and individuals cannot directly question witnesses in PRC, including via technological means.[92] From my understanding of Prof Xu's evidence, his conclusion appears to be that testifying by virtual means is nevertheless a possibility, provided that the necessary permission and guidance is sought from the relevant authorities. Mr Liao's view is that the so-called prohibition would not extend to a situation where the witnesses voluntarily give factual testimony.[93] Also, there is no prohibition against a PRC witness physically travelling to Singapore to give evidence in a Singapore court.[94] As a matter of practice, the Respondents also suggest the possibility of giving video link evidence from a location where such evidence is clearly not prohibited.[95] Before me, counsel for the Appellants stated that there was no evidence that the foreign witnesses would be willing to testify here,[96] but I note that there is likewise no evidence that they would not. Taking the evidence in the round, I conclude that the convenience of the witnesses points in favour of the PRC, but it is of note that this should not be given excessive weight as there is no reason to assume on the facts that the PRC witnesses would not be able to testify in Singapore proceedings.

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91 AS at para 71.

92 AS at para 71; Prof Xu's Opinion at paras 50–57: 2ABOD at pp 1030–1032.

93 Mr Liao's Opinion at para 64: 2ABOD at pp 1082–1083.

94 Mr Liao's Opinion at para 76: 2ABOD at p 1087.

95 RS at para 64.

96 Transcript at p 13 ln 24–28.

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95 The Appellants also argue that weight should be given to the extent of translation required for all the documentary and testimonial evidence in OA 945. There would be "extraordinary" time spent and costs incurred, and extensive translation would introduce inaccuracies that would affect the proper evaluation of the evidence.[97] On the possibility of inaccuracies, I agree with the AR that the risk is inherent in any translation. If the dispute were to be heard in the PRC, that same risk would apply to translation of any English documents to Mandarin, and it is not unimaginable that there would at least be some documents in English. That said, I accept that there would be more time spent and costs incurred for translation if OA 945 is heard in Singapore than if it was heard in the PRC, although I do not see how these can be considered "exorbitant" or "extraordinary" as the Appellants suggest. I also cannot agree that it is "oppressive" for the Respondents to "demand" that the trial of the action take place in English knowing that the relevant witnesses speak and the documents are in Mandarin.[98] There is nothing to suggest that OA 945 was brought in Singapore to unduly burden the Appellants and relevant witnesses, and any convenience arising from the proceedings taking place in English are merely coincidental. Relatedly, I disregard the Appellants' suggestion that the Liquidators "bootstrapped" themselves by choosing to make their claims under the IRDA when they could have made various other contractual or breach of fiduciary-related claims in the PRC.[99] As I canvassed earlier, it is somewhat natural, or even expected, for the Liquidators to bring the claims in Singapore as Singapore is the forum overseeing SG JHC's liquidation (see [69] above). I should add that a similar logic in the reverse would apply if the Liquidators, being Singapore court-appointed liquidators in a Singapore insolvency

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97 AS at paras 73–76.

98 AS at para 76.

99 Transcript at p 38 ln 5–14.

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proceeding of a Singapore company, are made to bring the action in the PRC where they would face more obstacles. The Liquidators' interest is ultimately in the smooth liquidation process of SG JHC, which is being overseen by the Singapore courts. In any event, to the extent that the Appellants are suggesting that the Liquidators should elect to bring the claim through the use of other causes of actions in the PRC to overcome some of the issues they have identified, it is self-evident that it is not for the Appellants to dictate what cause of action the Respondents should elect to bring against them.

96 On the matter of retrieval of documents, I accept the Appellants' suggestion that key documents are likely to be with the other PRC-based companies in the Founder Group.[100] However, I also take the Respondents' point that the Appellants have not even identified what those alleged key documents could be. It would appear to me that as the Agreement was between SG JHC and PKUF Commodities and concerned a transfer of SG Commodities' debt, most of the relevant documents would already be in the possession of the parties in OA 945. Therefore, even accepting that there may be difficulty with retrieving documents solely in the possession of the PRC-based companies, I do not think such difficulty would be significant in practical terms.

97 The Appellants also argue that the AR adopted a wrong lens of inquiry by holding that PKUF Commodities must show that it is the "more disadvantaged party" or "more significantly impacted" than SG JHC if OA 945 was heard in Singapore (GD at [121]).[101] To begin with, this argument stems from a misunderstanding of the reasoning employed by the AR. The AR did not suggest that which party would be more inconvenienced is the test to be applied.

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100 AS at para 80.

101 AS at paras 82–83.

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Her comments must be read in the context that the *Spiliada* test is inherently a comparative exercise as between the local and foreign forum. As the Appellants themselves put it, the "doctrine of *forum non conveniens compares* the balance of convenience between the jurisdictions and is a *practical inquiry*" [emphasis added].[102] Seen in this light, there is nothing wrong with considering the relative inconvenience to the parties in either forum as part of the overall analysis. The AR did not err in this regard.

98 Finally, I deal with the Appellants' contention that the AR mistakenly proceeded on the basis that OA 945 is an originating application ("OA") and will not proceed to trial, which, in her view, diminished the significance of the witness factors as the dispute could be decided on affidavit evidence. The Appellants, in response, refer to the first letter PKUF Commodities had sent to the Singapore court on 24 April 2025, where it had stated that it was considering "whether an application / request is needed to convert OA 945 to an originating claim". The conversion supposedly cannot be filed because of PKUF Commodities' jurisdictional challenge.[103] To be fair, I agree with the Appellants that this was not a consideration that should have been given much weight. I say this because it would be overly speculative, at this stage, to impute specific motivations to the Appellants as to why it has not converted OA 945 into an originating claim, or indeed, if it even intends to do so. Be that as it may, this appeared, at best, to be a tangential factor considered by the AR and therefore does not move the needle much in terms of how it informs the question of whether Singapore or the PRC is the more appropriate forum.

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102 AS at para 83.

103 AS at paras 77–78.

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99 Taking the evidence in the round, I agree with the AR that the personal connections of the parties and witnesses and locality of the documents, as a whole, marginally point in favour of the PRC as the more appropriate forum.

The connections to relevant events and transactions

100 The Appellants do not make any new arguments on appeal with regard to the connections to relevant events and transactions.[104] The AR found in the Appellants' favour that the Agreement was connected to the PRC and that the parties to the Agreement, although Singapore companies, were managed and operated out of the PRC. In my view, the AR was correct in finding that this was a factor which marginally weighed in favour of the PRC (GD at [123]). The connection of the Agreement to the PRC is not so significant when considering that these are somewhat historical facts, and the court is now considering an application that cannot in any way be divorced from the winding-up of SG JHC, which is supervised by the Singapore courts (see [89] above).

Conclusion

101 Having regard to all the above, I find that Singapore is clearly and distinctly the more appropriate forum for the determination of the dispute in OA 945. As the focus is on the quality, and not the quantity, of the connecting factors (see [77] above), in my view, the factors of the applicable law and the shape of the litigation, which point in favour of Singapore as the proper forum, are of greater significance here. It cannot be gainsaid that the avoidance action is in the context of the liquidation of SG JHC, a Singapore company whose liquidation is supervised by the Singapore court. It would seem that all the parties' interests are ultimately in connection with the liquidation of SG JHC,

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104 AS at para 91.

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whether as an assertion of debt or otherwise. In my view therefore, as the Respondents aptly put it, the "judicial centre of gravity of the dispute" is connected to Singapore, rather than the PRC.[105] The connections of the parties, witnesses, documents, and the underlying Agreement to the PRC pale in comparison to the substance of the legal dispute being so connected to Singapore. Thus, I find that Singapore is the clearly more appropriate forum to adjudicate the dispute in OA 945 for the interests of all the parties and for the ends of justice.

Stage two: whether there are circumstances by reason of which justice requires that a stay should nonetheless not be granted

102 Having concluded at the first stage of the *Spiliada* test that Singapore is the clearly more appropriate forum, the second stage of the test would not typically even arise for consideration. If it had been shown that the PRC is the more appropriate forum, then the analysis would necessarily have moved to the second stage, and the court would have granted a stay unless there were circumstances by reason of which justice required that a stay should nonetheless not be granted (see *The "Sea Justice"* [2024] 1 SLR 1118 at [5]).

103 For completeness, even if it can be said that the connecting factors point to PRC being, *prima facie*, the more appropriate forum, I make the observation that the Respondents would have a strong case that they would be denied substantial justice given that the claims could possibly be time-barred if brought in the PRC. As observed in *Halsbury's*: "practical justice demands that if the claimant had acted reasonably in commencing proceedings in the forum, and had not acted unreasonably in failing to protect its own position in the *prima facie* natural forum (eg, by issuing a protective writ) within the limitation period

105 RS at para 56.

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in that jurisdiction, it will be unjust to deprive the claimant of the juridical advantage of suing in the forum where his claim is not time-barred" (at para 75.114).

104 Additionally, as Prof Xu noted, it is uncommon for liquidators in foreign bankruptcy proceedings to initiate bankruptcy avoidance actions in the PRC against PRC companies. Therefore, the outcome of the Liquidators of SG JHC acting as the plaintiff in bankruptcy avoidance litigation in a PRC court remains uncertain.[106] This must also be considered in tandem with the fact that it is not clear whether the statutory relief provided for under the IRDA can be obtained, in the same form, in the PRC. To the extent that this suggests that if the result of the stay of OA 945 would be that the Respondents are forced to carry on two sets of proceedings with the risk of conflicting decisions, I would have been prepared to consider this at the second stage of the *Spiliada* test as a factor that may amount to denial of substantial justice (*Halsbury's* at para 75.112).

105 Nevertheless, these are merely observations as I have earlier concluded that the connecting factors point to Singapore being the clearly more appropriate forum. My conclusion on the *Spiliada* test is thus that Singapore is the clearly and distinctly the more appropriate forum to try the dispute in OA 945. The Appellants therefore have no basis to seek a setting aside of the SOOJ on the grounds that the *forum conveniens* requirement for the SOOJ application is not fulfilled. Similarly, a stay of OA 945 should not be granted on *forum non conveniens* grounds. Both these applications must fail (see [47] above).

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106 Prof Xu's Opinion at para 69: 2ABOD at pp 1035–1036.

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Conclusion

106 The AR was correct in refusing to set aside the SOOJ and in refusing to stay or dismiss OA 945 on *forum non conveniens* grounds. For the avoidance of doubt, I find that the Singapore court has the jurisdiction and should exercise such jurisdiction over OA 945. Accordingly, the appeal should be dismissed.

107 I order costs fixed at S$15,000 plus reasonable disbursements payable to the Respondents.[107]

108 It leaves me to conclude by expressing my appreciation to both sets of counsel for their comprehensive written submissions and the targeted nature of their oral submissions before me.

Mohamed Faizal
Judge of the High Court

Ong Boon Hwee William, Koh Zhen-Xi Benjamin, Kenneth Wang Ye and Wong Ling Yun (Allen & Gledhill LLP) for the appellants; Ong Tun Wei Danny SC and Mah Hao Ran Ian (Setia Law LLC) for the respondents.

[107] RS at para 83.

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