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TO BE OR NOT TO BE (SOLVENT) - A COMPARATIVE ANALYSIS OF SINGAPORE, UK, US, AND AUSTRALIA ON RECOGNISING FOREIGN PROCEEDINGS UNDER THE UNCITRAL MODEL LAW

PIERRE DZAKPASU, ANNE JESUDASON, FLORENCE LI

The recent case of *Ascentra Holdings, Inc v. SPGK Pte Ltd* [2023] SGCA 32 (*Ascentra*) has drawn a line in the sand in the Singapore court's interpretation of the UNCITRAL Model Law on Cross-Border Insolvency (UNCITRAL Model Law), as incorporated in the Third Schedule of the Insolvency, Restructuring and Dissolution Act 2018 (IRDA) to create the Singapore Model Law.

Following *Ascentra*, Singapore has taken the definitive position that the reference to "a law relating to insolvency or adjustment of debt", as used in Article 2(h) of the Singapore Model Law, should be widely construed, and that insolvency of the foreign debtor is **not** required for recognition of a foreign proceeding within the meaning of Article 2(h).

While the *Ascentra* decision provides new and welcome clarity in Singapore, the question of whether a proceeding is brought pursuant to "a law relating to insolvency" (and thereby falling within the meaning of 'foreign proceeding' capable of being recognised under the UNCITRAL Model Law) is not new. This has been discussed at length in multiple jurisdictions, where there are differing views.

In *Ascentra*, the Singapore Court of Appeal (SGCA) considered the issue to a different conclusion from the initial judgment of the Singapore High Court (SGHC), the latter hewing more closely with the prevailing view in the United Kingdom, where a solvent entity could not claim recognition of its overseas proceeding as a foreign proceeding.

The SGCA decision in *Ascentra* brings implementation of the Singapore Model Law in line with other popular UNCITRAL Model Law jurisdictions like the United States. From a jurisprudential perspective, this case is particularly helpful because it gave the SGCA opportunity to consider the issue and contrary view taken by the SGHC at first instance.

In reaching its decision, the SGCA considered that "a light threshold should be imposed for recognition". This is a clear directional marker that will assist applicants seeking recognition of their foreign proceedings in Singapore.

The opposite is also true; in that the *Ascentra* case suggests that resisting the recognition of 'foreign proceedings' in Singapore will likely be challenging in the face of clear jurisprudential and public policy considerations in favour of recognition.

In this Legal Update, we examine Singapore's newly settled position on what constitutes a 'foreign proceeding' in light of *Ascentra* – and compare this with equivalent provisions in the UK, US and Australia.

SUMMARY: ASCENTRA HOLDINGS, INC V. SPGK PTE LTD [2023] SGCA 32

PARTIES

- The first appellant, Ascentra Holdings, Inc was in the business of selling health and beauty products, as well as computer communications software, in Hong Kong, Taiwan and Singapore.
- The second and third appellants were liquidators appointed by the Cayman court.
- The respondent was SPGK Pte Ltd (SPGK).

BRIEF FACTS

- Ascentra maintained it had potential claims against SPGK in Singapore.
- Ascentra was in liquidation in the Cayman Islands, with its voluntary solvent liquidation process deemed to have commenced on 2 June 2021.
- Ascentra's official liquidators certified to the Cayman court on 23 September 2021 that the company "should be treated as solvent" for the purposes of liquidation proceedings in the Cayman Islands.
- On 6 January 2022, Ascentra filed for recognition of the Cayman Islands voluntary solvent liquidation process in Singapore as a 'foreign proceeding' pursuant to Article 15 of the Singapore Model Law (*Application for recognition of a foreign proceeding*).
- This application was rejected by the SGHC in the first instance on the grounds that Ascentra's solvency and the voluntary nature of the Cayman Island process precluded the Cayman Islands proceeding from being considered a 'foreign proceeding' under Article 2(h) of the Singapore Model Law. Ultimately, the SGHC held that the UNCITRAL Model Law and Singapore Model Law were never intended to apply to solvent companies or proceedings that are not insolvency proceedings.[1]

[1] *Re Ascentra Holdings, Inc (in official liquidation) and others (SPGK Pte Ltd, non-party)* [2023] SGHC 82, [3].

ISSUES ON APPEAL

- The SGCA considered whether voluntary solvent liquidation has a basis in a law "relating to insolvency or adjustment of debt" within the meaning of Article 2(h) of the Singapore Model Law; whether Ascentra's voluntary solvent liquidation in the Cayman Islands had such basis; and whether Article 2(h) applies to solvent companies.
- Article 2(h) is below, for reference:

  "*foreign proceeding*" *means a collective judicial or administrative proceeding in a foreign State, including an interim proceeding, under* ***a law relating to insolvency or adjustment of debt*** *in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation;*" (emphasis added)

SGCA DECISION

- The SGCA disagreed with the SGHC and ruled that Ascentra's voluntary solvent liquidation in the Cayman Islands falls within the definition of a 'foreign proceeding' pursuant to Article 2(h). Ascentra's solvency (and lack of severe financial distress) was not a bar to recognising the Cayman Islands proceedings as a foreign proceeding.
- The SGCA reasoned that it is not the intention of the UNCITRAL Model Law and Singapore Model Law that they should apply only to insolvent companies. There is nothing in either legislation that expressly defines the recognition regime by reference to the solvency status of the company in question.
- When determining whether a proceeding is pursuant to a "law relating to insolvency", courts are to take a "Broad Approach" and consider the relevant law as a whole, and not limit consideration of the law to only specific provisions under which the proceeding is founded, and whether these provisions apply for a company that is justified in severe financial distress.
- The SGCA also found that, in considering Article 2(h), the SGHC was too focused on the "law relating to insolvency" language and did not sufficiently consider the "adjustment of debt" limb in its analysis.
- The language "or adjustment of debt" after "a law relating to insolvency" is not in the UNCITRAL Model Law, but was an intentional addition by the Singapore Parliament in its drafting of the Singapore Model Law; and deliberately adopted from the definition of 'foreign proceeding' appearing in s 101(23) of the US Bankruptcy Code, Title 11, Chapter 1. This led the SGCA to conclude that, in its judgment, "it may also be inferred from Parliament's deliberate modification of Art 2(h) of the UNCITRAL Model Law in accordance with s 101(23) of the US Bankruptcy Code that Parliament intended to bring within the ambit of the [Singapore Model Law] proceedings that are recognisable under the provisions of US law that correspond to the [Singapore Model Law], specifically Chapter 15 of the US Bankruptcy Code".

- As such, it was determined that on a purposive reading of Article 2(h) in full, and with knowledge of this context, it is Parliament's intention to empower the Singapore courts to recognise foreign proceedings under the Singapore Model Law that would be recognisable under Chapter 15 of the US Bankruptcy Code, and to also recognise proceedings commenced under Chapter 11 of the US Bankruptcy Code or proceedings that are similar to schemes of arrangement under Singapore law.
- The SGCA also noted that none of the categories of recognisable or comparable proceedings referenced above "requires the subject company to be insolvent or in severe financial distress as a prerequisite for commencement".
- The SGCA considered a number of other factors in support of its decision. Whilst relevant, these factors in our view are secondary drivers of the decision and are therefore not presented in this article.[2]

KEY TAKEAWAYS FROM ASCENTRA – ORIGINS OF THE SINGAPORE MODEL LAW AND PARLIAMENTARY INTENTION

The SGCA decision not only takes a clear position on the relevance of a debtor's solvency and therefore the precise nature of the foreign proceeding to which the debtor company is subject. It also provides helpful discussion on the ambit of the Singapore Model Law and Parliamentary intention behind its drafting and impact on implementation.

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[2] The secondary grounds in support of the decision of the SGCA include:

- At *Ascentra* [55]-[60], upon considering various legislative papers including the 1997 and 2013 Guides to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency and the *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective (Updated 2022)*, SGCA held that the papers do not go so far to suggest that expanding the ambit of the UNCITRAL Model Law to include solvent companies would undermine the purpose of the UNCITRAL Model Law; nor do they suggest that solvent companies were intended to be excluded from the scope of the recognition regime.
- At *Ascentra* [61]-[62], the reluctance of the UNCITRAL Working Group on Insolvency Law to prescribe insolvency or financial distress as a requirement in Article 2(a) of the UNCITRAL Model Law indicates that extending the recognition regime to solvent proceedings is not inconsistent or incompatible with the primary purpose of the UNCITRAL Model Law. Furthermore, imposing insolvency as a requirement would add unwanted complexity to the existing requirements for recognition [97].
- At *Ascentra* [64]-[68], the Broad Approach coheres with the overall purposes of the UNCITRAL Model Law, namely to provide a harmonised approach to the treatment of cross-border insolvency proceedings, to facilitate co-operation between courts, to provide for the recognition of proceedings, and to afford direct access by foreign representatives of such companies to the courts of the enacting state.
- At *Ascentra* [69]-[92], the Broad Approach ensures that Art 2(h) of the Singapore Model Law is broadly harmonious with the approaches taken in other jurisdictions.
- At *Ascentra* [97], the Broad Approach should be adopted as a matter of practicality.

The SGCA's inquiry boiled down to a key question – "*whether the Singapore Parliament intended that the words "under a law relating to insolvency or adjustment of debt" in Art 2(h) of the [Singapore Model Law] should be limited to laws that are applicable only to companies in insolvency or severe financial distress*".[3]

In its analysis, the SGCA paid significant attention to modifications made by the Singapore Parliament to the UNCITRAL Model Law and compared the relevant language with its similar usage in the US. The SGCA also referenced the Model Law Cross-Border Insolvency Guide to Enactment and Interpretation in detail in determining the intention behind the relevant provisions of the UNCITRAL Model Law.

Whilst the SGCA's analysis and decision on the case settled on a gratifying conclusion, its line of argument in relation to reconciling the SGCA's broad interpretive approach of Article 2(h) with the purpose of the UNCITRAL Model Law is somewhat less compelling.

The SGCA does not dispute that the original intention of the UNCITRAL Model Law's drafters was for its underlying purpose to be focused on insolvent debtors and debtors in severe financial distress.

However, the SGCA was also satisfied that expanding the scope of the UNCITRAL Model Law to include solvent companies and foreign proceedings related to them will not "undermine" the overall thrust of the UNCITRAL Model Law.

A significant factor relied on by the SGCA in reaching this conclusion is the absence of an explicit exclusion of solvent companies and proceedings relating to solvent debtors from the UNCITRAL Model Law, as opposed to a positive statement including them. Despite the obvious policy benefits to be gained from the inclusion of solvent companies, other jurisdictions, especially those which have adopted the wording of the relevant articles without amendment, may not be as quick to agree with the SGCA's conclusion (which we discuss in the following section).

Nevertheless, the *Ascentra* decision effectively shows:

1. In the context of the IRDA generally and the Singapore Model Law specifically, significant weight must be given to Parliamentary intention and a thorough examination of the legislative purpose behind its enactment should be undertaken where possible;
2. Comparison with and study of equivalent regimes in other jurisdictions (particularly, in this case, the US), is helpful because the IRDA and Singapore Model Law draw heavily from the language used in the US Bankruptcy Code; and
3. Singapore courts should not shy away from a "Broad Approach" when interpreting the Singapore Model Law, and should pay due attention to the relevant body(ies) of legislation as a whole, as opposed to focusing on specific provisions to the exclusion of others.

[3] *Ascentra Holdings, Inc v. SPGK Pte Ltd* [2023] SGCA 32, [34].

These takeaways are consistent with the general approach Singapore courts have taken in the post-IRDA landscape, where the courts have regularly turned to US case law for guidance when interpreting the Singapore Model Law and determining Parliament's intention behind the provisions.

While not binding, US law precedents have proven persuasive in a number of cases (including *Re Zetta (1)*[4] [5] and *(2),*[6] [7] and *Re Attilan*[8]) in considering the tests for determining a debtor's centre of main interests and the application of super priority status for debtor-in-possession financing, respectively. The usefulness of US case law in aiding the analysis of the intention of the Singapore Parliament, especially where no local precedent has been established, was specifically raised in *Re Attilan*, where the SGHC acknowledged that much of the IRDA had been inspired by its US counterpart.[9]

A further takeaway is that Singapore courts are willing to extend the UNCITRAL Model Law (and IRDA) where there is clear parliamentary intent and/or public policy in support of the wider interpretation.

COMPARISON WITH OTHER JURISDICTIONS

Following *Ascentra*, Singapore's position is clear and establishes that insolvency of the debtor is not a requirement for a proceeding to be considered a 'foreign proceeding' within the meaning of Article 2(h) of the Singapore Model Law.

We compare Singapore's interpretation of the UNCITRAL Model Law, the language of the relevant provision, and the prevailing legal view with those of a number of other jurisdictions in the table below, with particular focus on the UK and US jurisdictions in the following commentary:

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4 *Re Zetta Jet Pte Ltd & Ors* [2018] SGHC 16.

5 In *Re Zetta (1)*, the court undertook a similar exercise as in *Ascentra* and considered the implications of Singapore's decision to remove the word "manifestly" from the phrase "manifestly contrary to public policy" in Article 6 of the Singapore Model Law.

6 *Re Zetta Jet Pte Ltd & Ors (Asia Aviation Holdings Pte Ltd, intervener)* [2019] SGHC 53.

7 In *Re Zetta (2)*, the court determined that the US approach regarding the relevant date for determining the COMI of a debtor should be adopted as it was a clearer and more certain interpretation of the UNCITRAL Model Law, and in line with the language used in the Singapore Model Law.

8 Re Attilan Group Ltd. [2017] SGHC 283.

9 Re Attilan Group Ltd. [2017] SGHC 283, [51]. See also *Singapore Parliamentary Debates, Official Report* (10 March 2017) vol 94 (Ms Indranee Rajah, Senior Minister of State for Finance), as quoted in *Re Attilan* [51], "*To facilitate rescue financing, the Court will be empowered to order that rescue financing be given super-priority. That means priority over all other debts or to be secured by a security interest that has priority over pre-existing security interests, provided the pre-existing interests are adequately protected. This is consistent with the approach in Chapter 11.*"

	Singapore	UK	US	Australia
Legislation incorporating UNCITRAL Model Law	IRDA, Third Schedule	Cross-Border Insolvency Regulations 2006, Schedule 1 (CBIR 2006)	US Bankruptcy Code, Chapter 15 (Chapter 15)	Cross-Border Insolvency Act 2008
Relevant article	Article 2(h): *"foreign proceeding" means "a collective judicial Art 2(h) "foreign proceeding" means a collective judicial or administrative proceeding in a foreign state, including an interim proceeding,* ***under a law relating to insolvency or adjustment of debt*** *in which proceeding the property and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation."*	Article 2(i): *"foreign proceeding" means "collective judicial or administrative proceeding in a foreign State, including an interim proceeding, pursuant to* ***a law relating to insolvency*** *in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganisation or liquidation."*	11 US Code § 101: *"foreign proceeding" means " a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under* ***a law relating to insolvency or adjustment of debt*** *in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court for the purpose of reorganisation or liquidation."*	Article 2(a): *"foreign proceeding" means "means a collective judicial or administrative proceeding in a foreign State including an interim proceeding, pursuant to* ***a law relating to insolvency*** *in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court for the purpose of reorganisation or liquidation."*

	Singapore	UK	US	Australia
Does solvency of the debtor preclude the proceeding from being a "foreign proceeding"?	No.	Possibly. There are conflicting authorities and some discussion on the requirement for financial distress or anticipation of insolvency, which may be a more helpful consideration. [10]	No.[11]	Undetermined, but anticipated to be aligned with the position in the US.[12]

The US and Singapore have expanded the scope of the provision in their implementation of the UNCITRAL Model law as mentioned above, whereas the UK and Australia have not.

THE US POSITION

Re Betcorp is the leading US authority on the issue of whether a company's solvency is a bar to recognition of the underlying proceeding as a 'foreign proceeding'. In *Ascentra*, the SGCA affirms the

[10] It was held at first instance in *Re Stanford International Bank Ltd and others* [2009] EWHC 1441 (Ch) and affirmed on appeal in *Re Stanford International Bank Ltd and another* [2010] 3 WLR 941 (*Re Stanford*) that the UNCITRAL Model Law, as applied by the CBIR 2006, could apply where the foreign proceeding had been brought under a law that included insolvency provisions (even though the company was not being wound up on the specific grounds of insolvency). However, it is noteworthy that the court at first instance at [94] found that the insolvency of the company (as a matter of fact) was a relevant fact in reaching its judgment. The appellate court was silent on this point. In *Re Agrokor dd* [2017] EWHC 2791 (*Re Agrokor*), the court affirmed the broad interpretation of the UNCITRAL Model Law but noted that "the matter is obviously all the clearer if insolvency can indeed be demonstrated". This contrasts with the narrower approach adopted in a later decision in *Re Sturgeon Central Asia Balanced Fund Ltd* [2020] EWHC 123 (Ch) (*Re Sturgeon*), where the English court set aside a previous order to recognise a solvent liquidation process in Bermuda where the debtor was in no financial distress and considered to be 'undoubtedly solvent'.

[11] It was held in *Re Betcorp Limited (in liquidation)* 400 BR 266 (Nevada US Bankruptcy Court, 2009) (*Re Betcorp*) that an Australian solvent liquidation could be recognised as a foreign proceeding under Chapter 15 of the US Bankruptcy Code. The debtor in *Re Betcorp* was not considered to be in severe financial distress.

[12] It was discussed in *Re Chow Cho Poon (Private) Ltd* (2011) 80 NSWLR 507 (SC, NSW) that the whole of the Singapore Companies Act, as was the relevant act at the time, or at least the whole of its winding up provisions might be classified as a "law relating to insolvency", even if the winding-up was ordered on the just and equitable ground alone and not on the debtor's inability to pay its debts as they fell due.

finding in *Re Betcorp*, noting that while the ruling has attracted a degree of academic criticism,[13] the Broad Approach taken in *Re Betcorp* towards the interpretation of the words "law relating to insolvency or adjustment of debt" better coheres with the ordinary meaning of Article 2(h) and reflects Parliament's intention to include proceedings concerning solvent companies within the scope of the Singapore Model Law.

The alignment of Article 2(h) with s 101(23) of the US Bankruptcy Code, and Parliament's intention to do so, appears to have translated into similarities between the decisions of SGCA in *Ascentra* and *Re Betcorp*.

THE UK POSITION

The position in the UK is less clear cut than that of the US and Singapore. The English courts have been persuaded both ways to both accept and reject the broad reading adopted by the SGCA.

Requirement for financial distress, though short of full-blown insolvency, as a requirement for recognition has also been significantly discussed.

Re Sturgeon is a notable outlier where the English High Court declined to follow the previous UK position in *Re Stanford* and the US position in *Re Betcorp.* The court in *Re Sturgeon* refused to recognise the winding-up proceedings of a solvent Bermuda-registered company being wound up in Bermuda on just and equitable grounds under the Bermuda Companies Act 1981 as a foreign proceeding within the meaning of Article 2(i) of CBIR 2006.

The UK court considered that the relevant Bermuda law provision was not a law relating to insolvency and that it would be contrary to the purpose and object of the UNCITRAL Model Law to interpret 'foreign proceedings' as including proceedings that concerned solvent companies, especially in the absence of financial distress.[14]

Re Sturgeon is currently the leading case in the UK regarding the recognition of solvent liquidation under Article 2(i) of CBIR 2006. It deals directly with the proceedings of a solvent company. In *Re*

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13 *Ascentra Holdings, Inc v. SPGK Pte Ltd* [2023] SGCA 32, [72]-[83]. See also *Re Sturgeon* [2020] EWHC 123 (Ch), [91]-[93], citing (i) Goode on Principles of Corporate Insolvency Law (5th ed., 2018) para 16-29 at p.926 that it is "doubtful" that an English Court would reach the same conclusion and permit a "members' voluntary winding up to qualify"; and (ii) Sheldon on Cross-border Insolvency (4th ed., 2015) para 3.35 where it is stated of *Re Betcorp* that, it is "true that members voluntary liquidation was initiated under a body of law which included provisions for an insolvent liquidation, but that coincidence does not necessarily justify bringing within the UNCITRAL Model Law's scheme of recognition and assistance a proceeding in relation to a solvent company".

14 *Re Sturgeon* [2020] EWHC 123 (Ch), [4]-[8]. The High Court held that the solvent liquidation of the company on the just and equitable ground was not a law relating to insolvency and therefore not within the meaning of Art 2(i) of UK Model Law. It would be contrary to the stated purpose and object of the Model Law to interpret "foreign proceedings" to include solvent debtors, and in particular, to include proceedings that have the purpose of producing a return to members (rather than creditors). As such, for proceedings to be recognised in UK, the proceedings "must relate to the resolution of the debtor's insolvency".

Stanford and *Re Agrokor*,[15] both cases involved companies that were insolvent on the facts and evidence. While the courts did not go so far as to identify their insolvency as a mandatory requirement for their winding up to be considered a 'foreign proceeding', their insolvency formed part of the courts' reasoning in both decisions and was undoubtedly a contributing factor to the outcome.[16]

Returning to Singapore, the SGCA considers this in greater detail in *Ascentra*, and ultimately disagrees with the criticisms levelled in *Re Sturgeon* against *Re Betcorp*. The SGCA recognises that the UNCITRAL Model Law was "*primarily focused* on companies that are insolvent or in severe financial distress" but maintains that it would not be "contrary to the purpose and object of the UNCITRAL Model Law to extend the scope of the UNCITRAL Model Law to proceedings concerning solvent companies."[17]

The UK's position is not unfounded and it would be unfair to cast it unfavourably as an argument without merit, particularly as Article 2(i) of CBIR 2006 does not contain the additional scope-expanding language found in the equivalent Singapore and US legislation.

The crux of the issue in *Re Sturgeon* – and the position the UK court took – is that in the absence of actual insolvency, the element of "financial distress" should be demonstrated in order to fall within the purpose and ambit of the CBIR 2006. On plain reading of the *Re Sturgeon* decision, it appears that the UK court is using a debtor's insolvency as an indisputable identifier of financial distress. This is a persuasive argument. The existence of "financial distress" (whether as an inclusive of insolvency or a processor to insolvency), and the insolvency proceedings enquiry from it, becomes the key factor in qualifying for recognition under the CBIR 2006 in the absence of technical insolvency.

The question of what would qualify as "insolvency", and whether financial distress is indeed a condition to insolvency, has also been mooted in *Re gategroup*[18] (though in the context of the Recast Insolvency Regulation), wherein the UK court held that UK restructuring plans could be distinguished from UK schemes of arrangement (the former being insolvency proceedings, and the latter not necessarily so) on the grounds that the former required evidence of financial difficulty. While this judgment has garnered some amount of academic criticism, some have come to its defence, noting that the concept of "insolvency" is vague and more scalar than binary in nature. [19]

We would argue that in respect of this limb of the UNCITRAL Model Law and the meaning of 'foreign proceeding', the UK applies a higher threshold for debtors to claim recognition of their foreign

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15 *Re Agrokor dd* [2017] EWHC 2791.

16 See also United Nations Commission on International Trade Law, *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective (Updated 2022)* which directly explains the UNCITRAL position on this issue. Paragraph 85 discusses *Re Sturgeon* and paragraph 86 expressly states: "a judicial or administrative proceeding to wind up a solvent entity where the goal is to dissolve the entity … are not insolvency proceedings within the scope of [the UNCITRAL Model Law]".

17 *Ascentra Holdings, Inc v. SPGK Pte Ltd* [2023] SGCA 32, [88] – [89].

18 *Re gategroup Guarantee Limited* [2021] EWHC 304 (Ch).

19 The concept of "insolvency" and "pre-insolvency" has also been mooted in Re gategroup Guarantee Limited [2021] EWHC 304 (Ch), as discussed further in Mokal, "What is an insolvency proceeding? Gategroup lands in a gated community", 13 June 2022.

proceedings. It is also important to note, as mentioned above, that the UK does not adopt the additional language, "or adjustment of debt", in Article 2(i) of the CBIR 2006. Consequently, it is possible to argue plausibly and without engaging the debate around whether Article 2(h) of the UNCITRAL Model Law applies to solvent companies that the different outcomes arise because the UK is at less liberty to expand its application of the UNCITRAL Model Law.

CONCLUSIONS

Ascentra is the latest in a series of local cases that are giving direction and clarity to the implementation of the Singapore Model Law. Recent cases like *Re Zipmex*,[20] *Re Design Studio*[21] and others are helpful points of reference that, when connected, point to a broader trend in Singapore's developing jurisprudence on cross-border insolvency.

Singapore is intentionally and effectively positioning itself as a destination for debtor-friendly restructuring. This bodes well for debtors seeking recognition in Singapore. Though conversely, creditors and contributories will have a harder time resisting recognition proceedings in Singapore.

The decision in *Ascentra* also brings Singapore broadly in line with a number of other popular jurisdictions, which should increase its attractiveness as a potential forum.

When planning whether, and where, recognition applications should be made or resisted, parties should consider whether (in addition to other requirements for successful recognition)[22] the relevant elements of a 'foreign proceeding' can be satisfied in the target jurisdictions.

Creditors seeking to resist recognition in Singapore will likely need to take a more strategic approach if they are to succeed in casting the relevant underlying proceeding as one that does not bear the necessary hallmarks of a proceeding relating to insolvency or debt adjustment. The threshold for this is high and will require considerable thought.

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20 *Re Zipmex Pte Ltd and other matters* [2023] SGHC 88, in which the SGHC found that the operation of a "hot wallet" hosted in Singapore was sufficient for a foreign subsidiary to claim sufficient nexus with Singapore.

21 *Re Design Studio Group Ltd and other matters* [2020] SGHC 148, in which the SGHC approved a 'roll-up' and granted super priority status to a DIP financing.

22 We note that there are multiple elements that must be demonstrated before a proceeding is determined to be a "foreign proceeding" within the meaning of the relevant legislation (e.g. the proceeding being a collective judicial or administrative proceeding, and the proceeding being subject to control or supervision by a foreign court, etc.). These elements fall outside the scope of this article's discussion.

CONTACTS

For more information about the topics raised in this Legal Update, please contact any of the following lawyers.

PARTNER
PIERRE DZAKPASU
SINGAPORE +65 6922 2310
PIERRE.DZAKPASU@MAYERBROWN.COM

ASSOCIATE
FLORENCE LI
HONG KONG
+852 2843 2202
FLORENCE.LI@MAYERBROWN.COM

ASSOCIATE
ANNE JESUDASON
SINGAPORE +65 6922 2980
ANNE.JESUDASON@MAYERBROWN.COM