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H&C S Holdings Pte Limited: Singapore's New Moratorium Goes Global

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Synopsis

In *H&C S Holdings Pte Limited* [2019] EWHC 1459, the High Court of England and Wales recognised a moratorium under section 211B of the Republic of Singapore's Companies Act ('the Singapore Companies Act') as foreign main proceedings. It is understood that this is the first time that the moratorium had been recognised internationally. The judgment does not go into detail as to why it was appropriate to recognise the proceedings, this article sets out in more detail the evidence and submissions that were before the court.

The Singaporean regime

In 2017 sections 211A to 211J were added to the Singapore Companies Act following the recommendations of two law reform committees. Section 211B provides that where a company has proposed a compromise or arrangement to its creditors, or where it intends to do so, moratorium relief can be sought from the court. The filing of an application creates an automatic moratorium which lasts either until the hearing of the application or for 30 days, whichever is shorter.

On hearing the application for a moratorium the court must be satisfied that the applicant has made, or undertakes to make, an application to court to convene a meeting of creditors, or an application to approve a compromise or arrangement already agreed. The court must further be satisfied that the application is made in good faith. This latter requirement was made clear in the leading case on the section *Re IM Skaugen KE and other matters* [2018] SGHC 259.

The Singaporean proceedings

H&C S Holdings Pte Limited ('H&C') is a Singaporean registered company primarily engaged in the trading of commodities within the iron and steel industry. It suffered trading difficulties in the second half of 2018 due in part to the economic slowdown in the PRC.

On 21 January 2019 H&C, which intended to propose a scheme to its creditors, issued a summons in the Singaporean Court seeking a moratorium under section 211B. The filing of that summons created an automatic moratorium as set out above.

H&C's application came before Justice Vidodh Coomaraswamy in the Singaporean Court on 19 and 20 February 2019. Despite opposition from several creditors the Judge granted H&C a six-month moratorium.

The English application

H&C made an application for recognition of the moratorium under the Cross Border Insolvency Regulations 2006 ('CBIR') on 28 February 2019. Recognition in England was necessary because there were two arbitrations ongoing in the jurisdiction between H&C and Glencore International AG ('Glencore').

Glencore, which had been one of the creditors who unsuccessfully opposed the moratorium in Singapore, were served with the recognition application. At the final hearing, before ICC Judge Jones, Glencore did not support or oppose the recognition application but sought to vary the automatic stay.

Article 15 of the Model Law on Cross-Border Insolvency ('the Model Law') (as it appears at schedule 1 to the CBIR) provides that a foreign representative can apply for recognition of foreign proceedings. Foreign representatives are usually office holders but the lack of an office holder is no bar to recognition. In *Re 19 Entertainment Ltd* [2016] EWHC 1545 the company itself had applied for and received recognition for proceedings under chapter 11 of the US Bankruptcy Code ('Chapter 11').

Article 2 of the Model Law defines foreign proceeding as '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.' As the Singaporean moratorium had not previously been recognised it was necessary for ICC Judge Jones to be addressed on whether it satisfied Article 2. Detailed written submissions were provided before the hearing.

Reference was made to the Guide to Enactment and interpretation of the UNICITRAL Model Law 2014 ('the Guide of Enactment') which is referred to within the CBIR. Further, as the CBIR and the Guide of Enactment make clear, harmonised application is important and so several US cases were referred to.

ICC Judge Jones considered evidence from Patrick Ang of Raja & Tann Singapore LLP regarding the nature of the Singaporean moratorium. The submissions made on behalf of H&C followed the sub-headings set out in the Guide of Enactment.

Collective proceeding for the purpose of reorganisation or liquidation

The Guide of Enactment makes it clear that the definition of 'collective proceeding' is broad but that the Model Law is not intended to be used merely as a collection device for a particular creditor or group of creditors. Mr Ang's evidence was that sections 211A to 211J only applied to a compromise between a company and its creditors and not, for example, to an arrangement between a company and its members.

The court was referred to the fact that Chapter 11 proceedings have previously been recognised in England and English schemes of arrangement are regularly recognised in the United States.

The Guide of Enactment makes clear that interim proceedings can be recognised.

Pursuant to a law relating to insolvency

Mr Ang's evidence was that the moratorium is 'an integral part of the Singapore insolvency regime', indeed section 211B and the sections around it are within the definition of 'Singapore insolvency law' within the Singaporean Companies Act.

Under the control or supervision of a foreign court

The Guide of Enactment provides (at paragraph 74) that the supervision 'may be potential rather than actual' and that it could be control exercised by an insolvency representative where that person is subject to the control or supervision of the court. The Guide also provides that expedited proceedings, at which the court exercises some control at a late stage, are not to be excluded.

Mr Ang's evidence was that the Singapore Court would need to approve the convening of a creditors' meeting and would have to approve any scheme. He also explained that every proof of debt received for the purpose of voting in the meeting would be adjudicated upon by a person appointed by the court to serve as chairman. If there is any dispute between chairman and creditor this is adjudicated by another court appointee.

Variation of the moratorium

ICC Judge Jones, following *Re 19 Entertainment* extended the automatic moratorium so that it reflected a moratorium in an English administration. However, the Judge also varied the moratorium to allow the arbitrators in one of the arbitrations against Glencore to publish its award where the final hearing had already taken place.

Comment

There was little difficulty in getting the Singaporean moratorium recognised: it was not opposed by Glencore who appeared by counsel and ICC Judge Jones did not require detailed oral submissions. This case is clear authority (albeit at first instance) that the Singaporean moratorium should be recognised in England and Wales. Indeed, as the Model Law should be applied harmoniously it may well be used as authority elsewhere.

However, it should be noted that other jurisdictions have not welcomed the moratorium so warmly. In *CW Advanced Technologies Limited* [2018] HKCFI 1705 Harris J stated (obiter) that the moratorium should not be recognised in Hong Kong. Indeed, that had been the position argued by the *amicus curiae*. As Hong Kong has not adopted the Model Law, the question before the court was different but one of the court's concerns was whether the Singaporean moratorium was in fact a collective insolvency proceeding. It may be that that point can be reargued in the future.

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