Singapore High Court finds that foreign liquidators appointed in a voluntary liquidation abroad can be recognised in Singapore

The Singapore High Court held, in *Re Gulf Pacific Shipping Ltd (in creditors' voluntary liquidation) and others* [2016] SGHC 287, that liquidators appointed in a foreign *voluntary* liquidation can be recognised in Singapore, and that there should not be any distinction drawn between voluntary and compulsory liquidations. In coming to its decision, the Singapore Court reiterated its philosophical commitment to an internationalist (rather than territorial) approach towards cross-border insolvencies.

Background facts

Gulf Pacific Shipping Limited (Gulf Pacific) was a Hong Kong-incorporated company wholly owned by STX Pan Ocean (Hong Kong) Co Ltd (STX-HK). After STX-HK was put into compulsory liquidation in November 2013, Gulf Pacific was put into creditors' *voluntary* liquidation in 2016. Liquidators were appointed for Gulf Pacific in Hong Kong.

The Hong Kong liquidators then sought copies of bank statements from ABN AMRO Bank NV Singapore Branch (the Bank**)** in respect of an account which Gulf Pacific appeared to have had with the Bank in Singapore. In response, the Bank requested the liquidators to first obtain a Singapore court order sanctioning their appointment (as liquidators) and their request.

The application to recognise the foreign liquidators

Accordingly, the liquidators applied to the Singapore High Court for an order recognising the foreign liquidators appointed in Gulf Pacific's place of incorporation, *i.e.* Hong Kong.

A liquidator properly appointed under the law of a company's place of incorporation would, typically, in the absence of any dispute as to the centre of main interest of the company (COMI), be granted recognition by the Singapore Court. There was no dispute about Gulf Pacific's COMI on the facts.

The only outstanding issue in the application was, therefore, whether the approach should differ when the liquidators were appointed pursuant to a *voluntary* liquidation.

Key issues

- Liquidators appointed in a foreign voluntary liquidation can be recognised in Singapore.
- In an application to recognise foreign liquidators, there should in principle be no distinction between a foreign *voluntary* liquidation and a foreign *compulsory* liquidation.
- Recognition of foreign insolvency proceedings is founded on internationalist concerns of promoting the orderly distribution of assets and resolution of assets across different jurisdictions.

The granting of the application

The High Court granted the application. It found that the foreign liquidators appointed in the Gulf Pacific's place of incorporation were entitled to be recognised in Singapore, notwithstanding that they were appointed pursuant to a *voluntary*, as opposed to a *compulsory*, liquidation in Hong Kong.

In coming to that conclusion, the Court preferred the internationalist approach, which views the orderly distribution of assets and resolution of affairs as the primary aim underlying cross-border insolvency proceedings. Consequently, there ought to be no distinction between a foreign *voluntary* liquidation and a foreign *compulsory* liquidation involving officers of a foreign court.

Re Betcorp Limited (In Liquidation) 400 BR 266 (Bankr. D. Nev. 2009), a United States (US) decision interpreting the UNCITRAL Model Law on Cross-Border Insolvency, was cited in support of such an approach. In that case, Judge Markell interpreted the term "*foreign proceedings*" (in a local US cross-border insolvency statute) broadly to encompass an Australian voluntary winding up which did not feature any petition or application to any court.

While the High Court in *Re Gulf Pacific* acknowledged that *Re Betcorp* was concerned with a statutory regime different to that of Singapore's, the Court nevertheless stated that the philosophical "*internationalist*" basis underlying *Re Betcorp* should guide Singapore Courts. This is particularly so given that the adoption by Singapore of the UNCITRAL Model Law on Cross-Border Insolvency is anticipated in the near future.

As the High Court also noted, the position in the United Kingdom may well be different. In *Singularis Holdings Ltd v PricewaterhouseCoopers* [2015] AC 1675, Lord Sumption JSC suggested that the recognition of foreign liquidators to assist foreign liquidations may well be limited to compulsory liquidations involving officers of a foreign court, and not extend to voluntary liquidations. A voluntary winding up was described by Lord Sumption as essentially a private arrangement, and not of the same nature as an insolvency involving officers of a foreign court.

The Singapore Court, however, preferred the differing stance of Lord Neuberger PSC in the same case. Lord Neuberger noted that it was arbitrary to distinguish between voluntary and compulsory liquidations in this context. This accords with the approach taken in *Re Betcorp*, where the US Court observed, amongst other things, that the liquidators appointed pursuant to a voluntary winding up would nevertheless be subject to supervision by the Courts, who have a broad mandate to review the actions of the liquidators, and if the liquidators act in derogation of the applicable *Corporations Act* (in Australia), the court "*may take such action as it thinks fit*".

In other words, just because the liquidators in a voluntary winding up are not appointed by the Court does not mean that they are not subject to the supervision of the Court. In that regard, a narrow interpretation of a voluntary winding up as a private arrangement not deserving of foreign recognition and support would be inconsistent with the internationalist approach preferred by the Singapore Court, and embodied in the UNCITRAL Model Law.

Conclusion

The internationalist approach endorsed by the Singapore High Court in *Re Gulf Pacific* is consistent with Singapore's intended adoption of the UNCITRAL Model Law on Cross-Border Insolvency in the near future.

The Model Law seeks to promote recognition of foreign insolvency proceedings, by simplifying procedural and substantive requisites (as compared with that of other non-Model Law regimes).

This feature is but just one manifestation of the Model Law's general aim to facilitate a coordinated, global solution in cross-border insolvencies – with which *Re Gulf Pacific*'s internationalist approach resonates.

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