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Recognition and Assistance of Foreign Insolvency Proceedings: A Comparison of Singapore's Model Law Regime with the Approaches of the BVI, Cayman and Bermuda Courts

Nicola Roberts, Managing Partner; Jayesh Chatlani, Partner; and Eunice Lau, Senior Associate, Harney, Westwood & Riegels Singapore LLP, Singapore

Synopsis

In 2017, Singapore incorporated the UNCITRAL Model Law on Cross-Border Insolvency (the 'Model Law') into its domestic legislation,¹ providing a comprehensive and structured framework for the recognition and assistance of foreign corporate insolvency proceedings. By contrast, the offshore jurisdictions of the British Virgin Islands, the Cayman Islands, and Bermuda have not adopted the Model Law. Each relies on its own domestic statutory mechanisms and common law principles. The Singapore Model Law regime thus provides a useful reference point against which to examine the more varied approaches taken in the BVI, Cayman and Bermuda. This article offers a comparative analysis of the recognition regimes with a view to identifying the practical tools available to insolvency practitioners seeking recognition and assistance in these jurisdictions.

This article addresses certain aspects of Singapore law for general informational purposes only. Harney Westwood & Riegels do not practise Singapore law and its contents should not be construed or relied upon as legal advice on Singapore law.

I. Singapore's Model Law Framework under the IRDA

Singapore has adopted the Model Law with modifications ('SG Model Law') as set out in the Third Schedule to the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) ('IRDA'). The regime provides a streamlined statutory framework enabling foreign

representatives to apply to the Singapore Court for recognition of foreign insolvency or restructuring proceedings in which they were appointed.

Pursuant to Article 17(1), the Singapore Court must recognise a foreign proceeding where (i) it falls within the statutory definition of 'foreign proceeding' in Article 2(h)², (ii) the application is brought by a 'foreign representative' as defined in Article 2(i),³ and (iii) recognition would not be contrary to Singapore public policy.

If the threshold requirements are met, recognition is mandatory. The proceeding will either be recognised as a foreign main proceeding (if it takes place in the debtor's centre of main interests ('COMI'), presumed in the absence of evidence to the contrary to be the debtor's registered office⁴) or as a foreign non-main proceeding (if the debtor has an establishment in the foreign state). The scope of relief depends on the classification:

- a. Recognition as a foreign main proceeding triggers automatic relief,⁵ including a stay of proceedings and of enforcement against the debtor and its assets.
- b. In all cases (whether the proceeding is recognised as main or non-main), the Singapore Court has the power to grant a wide range of discretionary relief, including:
 - i. staying proceedings against the debtor and its assets;
 - ii. staying execution against the debtor's assets;
 - iii. suspending the right to transfer, encumber or otherwise dispose of the debtor's assets;

Notes

- 1 The Model Law was originally enacted via the Companies (Amendment) Act 2017, Act 15 of 2017, with adaptations, and is now codified in the Third Schedule to the IRDA.
- 2 Article 2(h) defines 'foreign proceeding' as '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'.
- 3 Article 2(i) defines 'foreign representative' as 'a person or body, including one appointed on an interim basis, authorised in a foreign proceeding to administer the reorganisation or the liquidation of the debtor's property or affairs or to act as a representative of the foreign proceeding'.
- 4 Pursuant to Article 16(3)
- 5 Pursuant to Article 20(1)

- iv. providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's property, affairs, rights, obligations or liabilities;
 - v. entrusting the administration or realisation of all or part of the debtor's property located in Singapore to the foreign representative or another person designated by the Court; and
 - vi. granting any additional relief that may be available to a Singapore insolvency officeholder.
- c. In all cases, the Singapore Court may also entrust the distribution of assets located in Singapore to the foreign representative or other person designated by the Court, provided that the court is satisfied that the interests of creditors in Singapore are adequately protected.

Since the SG Model Law was first enacted in 2017, it has been the subject of over 20 written judgments from the Singapore courts which have recognised proceedings from a wide range of jurisdictions, including the US,⁶ China,⁷ India,⁸ Japan,⁹ Malaysia,¹⁰ Indonesia,¹¹ as well as the BVI,¹² the Cayman Islands,¹³ and Bermuda.¹⁴ Most notably, the cases show that the Singapore courts have adopted an expansive and facilitative approach towards foreign proceedings by:

- a. recognising and, where appropriate, enforcing foreign restructuring plans and schemes that potentially compromise Singapore-law governed debt, subject to conditions designed to protect the interests of local creditors;¹⁵
- b. confirming that the statutory definition of 'foreign proceeding' under the SG Model Law is deliberately broad and extends to foreign insolvency, restructuring, or liquidation proceedings concerning companies that are solvent, not only those that are insolvent or in severe financial distress;¹⁶
- c. exercising a wide discretionary power to grant relief, including forms of assistance not otherwise available under Singapore law, noting that the Singapore legislature had expressly modified the Model Law language to empower the Court to

grant 'any additional relief that may be available to a Singapore insolvency officeholder'.¹⁷

II. The offshore regimes: BVI, Cayman, Bermuda

Unlike Singapore, the BVI, Cayman Islands, and Bermuda have not adopted the Model Law and continue to rely on a combination of local statutory provisions and common law principles. The following sections examine each of these offshore regimes in turn.

A. BVI

Overview of dual regime

The position in the BVI is more nuanced. The BVI Insolvency Act 2003 ('IA 2003') contains two parts that address cross-border recognition and assistance: (i) Part XVIII, which enacts the Model Law, but has not been brought into force; and (ii) Part XIX, which is in force and establishes a statutory framework for granting assistance to foreign representatives from designated jurisdictions in specified types of insolvency proceedings.

The leading authority in this area is the decision of the Eastern Caribbean Court of Appeal ('EC CoA') in *Net International Property Ltd v Adv Eitan Erez* (BVIHCPMAP 2019/0010, 20 September 2021) ('*Net International*'), in which the EC CoA clarified the operation of the dual regime of recognition and assistance under BVI law. In that case, Mr Erez, an Israeli trustee in bankruptcy, had obtained recognition of his appointment at first instance and sought assistance in the form of orders rectifying the register of members of a BVI company and permitting him to deal with assets situated in the jurisdiction.

Following a comprehensive review of the authorities, the EC CoA affirmed that recognition at common law remains available to foreign representatives from any jurisdiction, giving them standing before the BVI Court. However, the EC CoA held that substantive assistance (such as the power to deal with assets located in the BVI) could only be granted under Part XIX of the IA 2003 to representatives appointed in a designated

Notes

⁶ *Re Tantleff, Alan* [2022] SGHC 147

⁷ *Re King & Wood Mallesons* [2025] SGHC 67

⁸ *Re Compuage Infocom Ltd* [2025] SGHC 49

⁹ *Re Rams Challenge Shipping Pte Ltd* [2022] SGHC 220

¹⁰ *United Securities Sdn Bhd v UOB Ltd* [2021] SGCA 78

¹¹ *Re PT Garuda Indonesia (Persero) Tbk* [2024] SGHC(I) 1

¹² *Re Fullerton Capital Ltd (in liquidation)* [2024] SGHC 155; *Re Fullerton Capital Ltd (in liquidation)* [2025] SGCA 11

¹³ *Ascentra Holdings, Inc v SPGK Pte Ltd* [2023] SGCA 32

¹⁴ *British Steamship P&I Association v Thresh* [2024] SGCA 43

¹⁵ *Re PT Garuda Indonesia (Persero) Tbk* [2025] SGHC(I) 4; *Re Tantleff, Alan* [2022] SGHC 147; *Re Terraform Labs Pte. Ltd.* [2025] SGHC(I) 4

¹⁶ *Ascentra Holdings, Inc v SPGK Pte Ltd* [2023] SGCA 32

¹⁷ *Re Tantleff, Alan* [2022] SGHC 147

country. As Israel was not on the designated list, the orders granting assistance were set aside.

The reasoning of the EC CoA, and the position in the BVI, may be summarised as follows:

- a. **Recognition:** Recognition refers to the BVI Court's formal act of treating a foreign representative as having status in accordance with his or her appointment by the foreign court. While Part XVIII of the IA 2003 provides a comprehensive scheme for recognition that may be sufficient to abolish the common law of recognition, Part XVIII had not been brought into force. Accordingly, the common law right of recognition survives in the BVI, and the BVI Court continues to have the power to grant recognition pursuant to its common law jurisdiction.
- a. **Assistance:** By contrast, assistance refers to the broad powers that may be granted by the BVI Court to foreign representatives in relation to assets in the BVI. As noted, Part XIX of the IA 2003 provides a complete framework for foreign representatives from designated foreign countries to apply to the BVI Court for assistance. The EC CoA held that in light of Part XIX coming into force, the common law right of assistance had been abrogated.

While there has not been any further published judgments in the BVI on applications for recognition and assistance since *Net International*, in practice such applications may often be unopposed and determined by short *ex tempore* decisions that are not published. One recent example is the widely publicised but unreported decision involving Terraform Labs Limited, the BVI subsidiary of Terraform Labs Pte Ltd, which sought common law recognition of its US Chapter 11 proceedings together with statutory assistance pursuant to Part XIX from the BVI Court.¹⁸

Statutory assistance for designated jurisdictions under Part XIX

Under Part XIX,¹⁹ a foreign representative in specified types of insolvency proceedings taking place in a designated jurisdiction may apply to the BVI Court for a wide range of relief in aid of the foreign proceeding. Eligible proceedings are defined as collective judicial or administrative proceedings pursuant to a law relating to insolvency, in which the debtor's property and affairs are subject to control or supervision by a foreign court.

Until recently, the list of designated jurisdictions was relatively limited. However, on 18 September 2024, in a significant development, the BVI expanded the list of

designated jurisdictions from the original nine²⁰ to a total of 33. The expanded list includes not only most major onshore jurisdictions (e.g. US, UK, Australia, Hong Kong, Japan, and Singapore), but also principal offshore jurisdictions with close ties to the BVI (e.g. previously only Jersey, and now also Cayman Islands and Bermuda).

Pursuant to section 467 of the IA 2003, the BVI Court may grant a wide range of relief including stays of proceedings, restraints on asset dispositions, appointment of interim receivers, examination orders, and any other order the court considers appropriate. In exercising these powers, the BVI Court is guided by section 468(1), which emphasises (i) just treatment of all claimants, (ii) protection of local creditors, (iii) prevention of fraud, and (iv) promotion of judicial comity.

Limited assistance for non-designated jurisdictions

Foreign officeholders from non-designated jurisdictions face a more limited position. While they may obtain recognition at common law, they cannot access the substantive assistance powers conferred by Part XIX. In such cases, the following alternative pathways may be considered:

- a. Commencing fresh BVI insolvency proceedings (e.g. appointing a BVI liquidator) to deal with local assets;
- b. Seeking substantive relief through ordinary civil proceedings available to any claimant with standing, such as claims for breach of trust, fraud, or unjust enrichment. In *Net International*, for instance, the trustee in bankruptcy might have had to bring a rectification claim; and
- c. Relying on remedies such as freezing injunctions or proprietary claims where jurisdictional gateways are met.

In summary, the BVI's approach to recognition and assistance is defined by a dual regime: common law recognition, available to foreign officeholders from any jurisdiction, and statutory assistance under Part XIX, which is confined to foreign representatives from designated jurisdictions. Although the decision in *Net International* narrows the options of officeholders from non-designated jurisdictions, the recent expansion of the designated list has significantly broadened the scope of Part XIX. This development demonstrates the BVI's commitment to maintaining its position as a jurisdiction willing and able to assist in cross-border insolvency cases from a wide range of countries.

Notes

¹⁸ Based on the Claim Form filed in *Re Terraform Labs Limited* (BVIHCCOM2024/0368).

¹⁹ Section 467(2) of the IA 2003

²⁰ Australia, Canada, Finland, Hong Kong, Japan, Jersey, New Zealand, United Kingdom and United States of America

B. Cayman Islands

The Cayman Islands employs both legislation and common law principles to recognise and assist foreign insolvency proceedings. In each case, the applicable regime will be determined by the debtor's place of incorporation and the jurisdiction in which the foreign proceedings were commenced.

Statutory recognition and assistance

Sections 240 to 242 under Part XVII of the Companies Act (2025 Revision) ('CA 2025') deal with the circumstances in which the Grand Court may grant relief to recognise and assist foreign insolvency proceedings. There are a number of threshold requirements. Firstly, the debtor in question must be a foreign corporation or other foreign legal entity (i.e. it must be foreign with a separate legal personality). Secondly, the debtor must be subject to a foreign bankruptcy proceeding, defined to include proceedings to reorganise and rehabilitate an insolvent debtor, in its country of incorporation or establishment. In other words, the debtor must be insolvent. Thirdly, the application must be brought by a 'foreign representative', defined as a trustee, liquidator or other official appointed in respect of the debtor for the purpose of a foreign bankruptcy proceeding.

If the above requirements are satisfied, section 241 of the CA 2025 empowers the Grand Court to order a range of relief to (i) recognise the foreign representative, (ii) restrain or stay proceedings against the debtor, (iii) stay enforcement of any judgment against the debtor, (iv) make examination and disclosure orders against persons with information relating to the debtor's affairs and business, and (v) order the turnover of the debtor's property to the foreign representative.

Section 242 of the CA 2005 guides the Grand Court's discretion in granting such relief. The Grand Court will seek an economic and expeditious administration consistent with: (i) ensuring the just treatment of all creditors (wherever located), (ii) protecting local creditors from undue prejudice or inconvenience in the foreign bankruptcy proceeding, (iii) preventing fraudulent or preferential transfers, (iv) respecting local priority rules in distributions, (v) upholding valid security interests, (vi) refusing to enforce foreign revenue or penal claims, and (vii) observing comity.

In practice, Part XVII is commonly used for the recognition of insolvency proceedings of non-Cayman companies, including Chapter 11 proceedings of insolvent

companies incorporated in and subject to the laws of the United States.

Common law recognition and assistance

In cases falling outside the ambit of Part XVII, often cases involving Cayman-incorporated companies or cases where a foreign officeholder has been appointed in a non-place of incorporation, the Grand Court has affirmed that it applies the common law principle of modified universalism as articulated in the landmark Privy Council decision of *Singularis Holdings Ltd v Price-waterhouseCoopers* [2014] UKPC 36 ('*Singularis*')²¹ to recognise and assist foreign insolvency proceedings. This principle is founded on the idea that it serves the public interest for a foreign court exercising insolvency jurisdiction over a debtor company to be able to carry out a single, orderly, and worldwide insolvency process, with other courts lending assistance to the extent consistent with their own laws and public policy.

In *Singularis*, the Privy Council held that the common law power of assistance was subject to a number of limitations. First, it applied only to assist the officeholder of a foreign court of insolvency jurisdiction and would not be available to assist a voluntary winding up. Second, it was a power of assistance which exists to enable courts to surmount territorial limits of their powers, and could not enable the foreign officeholder to do what they were not permitted to do under the law by which they were appointed. Third, it was available only when it was necessary for the performance of the officeholders' functions. Fourth, the assistance must be consistent with the substantive law and public policy of the assisting court.

Case law from the Cayman Islands further shows that in considering whether to grant recognition and assistance, the Grand Court considers factors such as: (i) whether the non-place of incorporation insolvency proceeding is taking place in the company's locus of business (or COMI); (ii) whether parallel proceedings would serve to incur additional costs and unnecessary delay; (iii) whether any local reputational, regulatory or policy reasons militate in favour of a Cayman liquidation or provisional liquidation; (iv) the purpose for which the court is asked to recognise the foreign officeholders (e.g. whether to facilitate a restructuring or otherwise facilitate a winding up); and (v) whether there are any limitations on the court's power (in particular, the court cannot rely on common law recognition to grant relief that would only be available under a domestic statutory power that does not exist).

Notes

- 21 In *Singularis*, the Cayman-appointed liquidators of a Cayman company sought disclosure in the Bermuda court of documents belonging to the company's auditors, principally their working papers. Under Cayman law, however, only documents belonging to the company itself could be produced. The Privy Council held that the Bermuda Court could not order production pursuant to Bermuda companies legislation by analogy 'as if' the company had been wound up in Bermuda. Further, it was not a proper use of an assisting court's common law power of assistance to override a limitation imposed by the law of the foreign court of insolvency jurisdiction on the powers of its own officeholders.

Applying these principles, the Grand Court has in appropriate cases recognised and assisted foreign insolvency officeholders of Cayman-incorporated companies for limited and specific purposes, such as granting recognition to Hong Kong provisional liquidators to promote a parallel scheme in the Cayman Islands without Cayman liquidation proceedings.

C. Bermuda

Unlike the BVI and Cayman Islands, Bermuda has not enacted any legislation for the recognition and assistance of foreign insolvency proceedings. Recognition and assistance are therefore only available under the common law.

The Bermuda Court, like the Cayman Grand Court, applies the principle of modified universalism articulated in *Singularis* (as set out above) to determine whether to grant relief in aid of foreign insolvency proceedings. Following *Singularis*, the Bermuda courts have consistently demonstrated a facilitative approach, recognising and granting relief in multiple published decisions in support of US Chapter 11 reorganisation plans.²² It should be noted for completeness that none of the orders in these cases ‘recognised’ the relevant reorganisation plans by giving them substantive effect in Bermuda in the sense of directly varying Bermuda-law governed rights in breach of the *Gibbs* rule.²³ Rather, the Bermuda court in each case proceeded on the basis that the relevant stakeholders had participated in, or were otherwise bound by, the US Chapter 11 proceedings. Recognition was accordingly granted by way of stays or injunctions restraining proceedings in Bermuda, with the effect that rights could not be enforced locally against those parties.

III. Comparative analysis

A. Breadth of frameworks

As set out above, the breadth of the legal framework differs significantly across the four jurisdictions. Singapore’s Model Law regime is the most expansive as it applies to proceedings from any jurisdiction, including solvent restructurings,²⁴ so long as they fall within the statutory definition of a ‘foreign proceeding.’

On the other hand, the offshore jurisdictions have opted for more targeted frameworks. The BVI’s dual

system preserves common law recognition for all foreign officeholders, with substantive assistance through Part XIX for representatives from designated jurisdictions. The Cayman Islands employ a split regime: statutory recognition under Part XVII for foreign insolvent companies undergoing insolvency proceedings in their place of incorporation, and common law recognition under the principle of modified universalism in other cases. Bermuda, while operating solely under the common law, applies those same principles with a consistent willingness to assist.

B. Relief

The SG Model Law offers automatic relief upon recognition as a foreign main proceeding, including an immediate stay of proceedings and execution against the debtor’s assets. None of the offshore jurisdictions provides equivalent automatic relief on recognition. Relief in the BVI, Cayman Islands, and Bermuda is always discretionary. It bears mention, however, that the Cayman Islands has introduced a restructuring officer (‘RO’) regime, pursuant to which a statutory moratorium takes effect on the making of an RO application.

While all four jurisdictions offer a wide range of discretionary relief, including stays of proceedings, examination orders, disclosure orders, and orders restraining asset dispositions, Singapore’s framework expressly allows the court to grant ‘any additional relief available to a Singapore insolvency officeholder,’ facilitating the enforcement of foreign court orders that would not otherwise exist under domestic law. By contrast, the offshore courts’ powers to grant relief is limited to that provided by statute (BVI Part XIX; Cayman Part XVII) or as noted in *Singularis*, relief available in the foreign court exercising insolvency jurisdiction.

C. Recognition and foreign schemes

Singapore law recognises and, in appropriate cases, gives substantive effect to foreign restructuring schemes, including those that discharge Singapore-law governed debt, subject to public policy and creditor protection safeguards. On the other hand, notwithstanding the largely facilitative approach adopted by the three offshore jurisdictions, it is unlikely that a foreign scheme would be as readily enforceable in the

Notes

22 *Re Energy XXI Ltd* [2016] SC (Bda) 79 Com; *Re C & J Energy Services Ltd* [2017] Bda LR 22; *Re Seadrill Limited* [2018] SC (Bda) 30

23 The *Gibbs* Rule (from *Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux* [1890] 25 QBD 399) provides that the discharge of a debt is not effective unless it is in accordance with the law governing that debt. However, the *Gibbs* Rule does not apply where a creditor submits to the jurisdiction of a foreign court, either by submitting its claims in the foreign insolvency proceeding or otherwise agreeing to be bound thereby.

24 The offshore courts are likely to require insolvency as a threshold condition, following the English approach in *Re Sturgeon Central Asia Balanced Fund Ltd (in liquidation)* (No 2) [2020] EWHC 123 (Ch).

BVI, Cayman Islands and Bermuda. Hence, in practice, parallel schemes are still often required.

IV. Conclusion

Insolvency practitioners rarely have free rein in choosing the primary forum for insolvency proceedings as factors such as incorporation, centre of main interests, and asset location usually dictate that choice. Within that framework, Singapore and the offshore jurisdictions of BVI, Cayman and Bermuda play

complementary roles to protect local assets, safeguard creditor interests, and enable cross-border cooperation. Singapore offers the broadest and most predictable recognition framework, extending to solvent restructurings and capable of directly enforcing foreign schemes. The BVI, Cayman Islands, and Bermuda courts, while operating within more targeted statutory and common law limits, each provide effective tools to meet the needs of insolvency practitioners operating in a global context, and have shown a consistent readiness to work with foreign officeholders and to tailor relief to meet commercial needs.

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