IN THE SINGAPORE INTERNATIONAL COMMERCIAL COURT
OF THE REPUBLIC OF SINGAPORE

[2024] SGHC(I) 1

Originating Application No 5 of 2022

In the matter of Part 11 and Section 252 of the Insolvency, Restructuring and Dissolution Act 2018

In the matter of PT Garuda Indonesia (Persero) Tbk

Between

(1) Irfan Setiaputra
(2) Prasetio

… *Applicants*

And

(1) Greylag Goose Leasing 1410 Designated Activity Company
(2) Greylag Goose Leasing 1446 Designated Activity Company

… *Non-parties*

Originating Application No 5 of 2022 (Summons No 34 of 2023)

Between

(1) Irfan Setiaputra
(2) Prasetio

… *Applicants*

And

(1) Greylag Goose Leasing 1410 Designated Activity Company
(2) Greylag Goose Leasing 1446 Designated Activity Company

… *Non-parties*

JUDGMENT

[Insolvency Law — Cross-border insolvency — Recognition of foreign insolvency proceedings]
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Kannan Ramesh JAD, Anselmo Reyes IJ and Christopher Scott Sontchi IJ
25–26 September 2023

18 January 2024 Judgment reserved.

Christopher Scott Sontchi IJ (delivering the judgment of the court):

Introduction

1 The present application, SIC/OA 5/2022 ("OA 5"), is brought by Mr Irfan Setiaputra ("Mr Setiaputra") and Mr Prasetio (collectively, the "Applicants"), in their capacity as foreign representatives of PT Garuda Indonesia (Persero) Tbk ("Garuda Indonesia"), an Indonesian state-owned limited liability company, for the recognition of foreign proceedings and upon recognition, relief in terms of recognition and enforcement of a restructuring plan. The application is made under the Third Schedule (the "Third Schedule") of the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "IRDA"), which sets out the Model Law on Cross-Border Insolvency (30 May 1997) (the "Model Law") promulgated by the United Nations Commission on International Trade Law ("UNCITRAL"), as adopted in Singapore.

2 The Applicants seek, amongst others, the following orders for recognition and relief to be granted in support of Garuda Indonesia's restructuring proceeding in Indonesia:

(a) An order recognising *Suspension of Payment Case No. 425/Pdt.Sus-PKPU/2021/PN.Niaga.Kjt.Pst* (the "PKPU Proceeding") filed on 22 October 2021 in the Jakarta Commercial Court as a foreign main proceeding within the meaning of Article 2(*f*) of the Third Schedule.

(b) An order recognising the Applicants as foreign representatives within the meaning of Article 2(*i*) of the Third Schedule.

(c) An order staying all claims, enforcement, execution, and dealings against Garuda Indonesia and/or its assets under Article 20 of the Third Schedule.

(d) An order recognising and enforcing the restructuring plan (the "Composition Plan") approved by the PKPU Proceeding and homologated by the Jakarta Commercial Court on 27 June 2022 as a foreign order and to grant any appropriate relief under Article 21(1) of the Third Schedule.

(e) An order entrusting the Applicants with the administration and realisation of all or any part of Garuda Indonesia's property and assets in Singapore, to effectuate and/or to implement the Composition Plan.

3 The non-parties in the present case are Greylag Goose Leasing 1410 Designated Activity Company ("Greylag 1410") and Greylag Goose Leasing 1446 Designated Activity Company ("Greylag 1446") (collectively, the

"Greylag Entities"). The Greylag Entities do not challenge that the PKPU Proceeding is a foreign main proceeding within the meaning of Article 2(*f*) of the Third Schedule. Instead, their grounds of opposition are two-fold. First, that OA 5 was filed prematurely in light of pending proceedings before the Indonesian courts that might lead to the annulment of the Composition Plan and hence extinguish the substratum upon which OA 5 was brought. Second, that recognition of the PKPU Proceeding would be contrary to the public policy of Singapore under Article 6 of the Third Schedule.

4 Prior to the hearing of OA 5, the Greylag Entities filed SIC/SUM 34/2023 ("SUM 34") for an order that the Applicants produce certain categories of documents requested by the Greylag Entities. The documents related to the impact of the Composition Plan on Garuda Indonesia's subsidiary company, Garuda Indonesia Holiday France ("Garuda France"). SUM 34 was filed on 12 September 2023 following a request for production of documents that was served by the solicitors for the Greylag Entities on 28 August 2023 on the solicitors for the Applicants, which the latter rejected on 7 September 2023. We dismissed SUM 34 on 25 September 2023, the first day of the hearing of OA 5, with costs reserved pending the determination of OA 5. We address SUM 34 in detail at [36]–[44] below.

5 Having considered the parties' submissions, we allow the Applicants' application in OA 5 for the PKPU Proceeding to be recognised as a foreign main proceeding in Singapore. In so doing, we dismiss the two grounds of objections raised by the Greylag Entities. We further grant the reliefs sought by Garuda Indonesia as set out at [2] above. We add, however, that our orders granting the mandatory stay of proceedings under Article 20 of the Third Schedule and recognition and enforcement of the Composition Plan under Article 21(1) of the Third Schedule are subject to terms which are set out at [161]–[162] below.

Background to Garuda Indonesia's restructuring proceeding in Indonesia and related applications

Garuda Indonesia's business operations

6 Garuda Indonesia is the national airline of the Republic of Indonesia (the "ROI"). It is a full-service airline. Its business operations include providing domestic and international passenger travel, cargo services, reservation and IT services, hospitality and catering services, and repair and maintenance services. It is domiciled in Central Jakarta, and has its registered office at Garuda Indonesia Building, Jalan Kebon Sirih No 46A, Jakarta 10110, Indonesia (the "Jakarta Office"). Its principal place of business is located at the Soekarno-Hatta International Airport, Jakarta's main international airport. All its directors and a majority of its employees are Indonesian nationals. Garuda Indonesia's board meetings take place in Indonesia, and key business decisions are made in its Jakarta Office.

7 Garuda Indonesia is a publicly listed company on the Indonesian stock exchange. Its largest shareholder is the ROI, which holds (a) one share of Series A "Dwiwarna" (or "Golden Share") entitling the ROI to certain stipulated privileges under Article 5 (4.c) of Garuda Indonesia's Articles of Association, and (b) approximately 60.536% of Garuda Indonesia's Series B shares. The remainder of the Series B shares are owned by PT Trans Airways (28.265%) and the general public (collectively holding 11.199% and with each shareholder holding less than 5%). As noted earlier, Garuda Indonesia is the parent company of Garuda France. Garuda France's business operations are based in France.

8 Garuda Indonesia has been registered in Singapore as a foreign company since 11 August 1952 and has operated flights in and out of Singapore since 1966. It maintains an office at Singapore Changi Airport Terminal 3. Its assets

in Singapore include aircraft physically located in Singapore from time to time as well as cash.

9 The Applicants are officers of Garuda Indonesia. Mr Setiaputra is Garuda Indonesia's President and Chief Executive Officer while Mr Prasetio is the director of the finance and risk management department of Garuda Indonesia. They were appointed by Garuda Indonesia's board of directors as the airline's joint foreign representatives for the purpose of OA 5.

10 The Greylag Entities are two of Garuda Indonesia's creditors. They are also creditors of Garuda France. The Greylag Entities are the lessors of two Airbus aircraft (collectively, the "Aircraft"). The first is an Airbus A330-200 aircraft bearing Manufacturer's Serial Number 1410 ("Aircraft 1410"); the second is an Airbus A330-300 aircraft bearing Manufacturer's Serial Number 1446 ("Aircraft 1446").

The debts owed by Garuda Indonesia to the Greylag Entities

11 The debts owed by Garuda Indonesia to the Greylag Entities arose under two lease arrangements that involved the Greylag Entities, Garuda France, and Garuda Indonesia in respect of the Aircraft (the "Aircraft Leases").

12 The original lessor of Aircraft 1410 was Denpasar Aircraft Leasing (Ireland) Limited ("DAL"), and the original lessor of Aircraft 1446 was Surabaya Aircraft Leasing (Ireland) Limited ("SAL"). The lessee of the Aircraft was Garuda France. By way of novation agreements entered into on 28 October 2016 between DAL, Garuda France, and Greylag 1410 (in respect of Aircraft 1410) and between SAL, Garuda France, and Greylag 1446 (in respect of Aircraft 1446) (the "Aircraft Headleases"), the Greylag Entities became the lessors of the Aircraft. Garuda France remained the lessee of the Aircraft. By

way of two agreements dated 28 October 2016 (the "Aircraft Subleases"), Garuda France sub-leased the Aircraft to Garuda Indonesia on terms similar to those in the head-lease agreement between the respective original lessors (*ie*, DAL and SAL) and Garuda France.

13 On 27 September 2019, the Aircraft Subleases were amended to record the Greylag Entities as the new lessors of the respective Aircraft. At the same time, the parties also entered into two sets of agreements. The first set comprised two subordination agreements (the "Subordination Agreements") in connection with the leasing arrangements for the Aircraft. The second set comprised two security agreements respectively (the "Security Agreements") between Garuda France and Greylag 1410 (for Aircraft 1410), and between Garuda France and Greylag 1446 (for Aircraft 1446).

14 Paragraph 4(a) of each of the Subordination Agreements provides, in effect, that Garuda Indonesia's rights under the Aircraft Subleases "are subject and subordinate in all respects" to the rights of the Greylag Entities under the Aircraft Headleases and the Security Agreements. Crucially, paragraph 12 of the Subordination Agreements prescribes that upon the giving of notice by Garuda France to Garuda Indonesia informing the latter that the Greylag Entities' security interests under the Security Agreements had become enforceable, the Greylag Entities will be entitled to:

> (a) exercise "all the rights, powers and discretions" that Garuda France might have under the Aircraft Subleases and "any other Operative Documents (as defined in the [Aircraft Subleases]"; and

(b) require the payment of all money payable by Garuda Indonesia under the Aircraft Subleases and any other Operative Documents to be directed to any bank accounts indicated by the Greylag Entities.

15 By letters dated 28 January 2020, 13 February 2020, 27 April 2020 and 4 January 2022, the Greylag Entities issued notices to Garuda Indonesia and Garuda France declaring, among others, what it termed "Events of Defaults". Following these notices, Garuda Indonesia became indebted to the Greylag Entities pursuant to the Greylag Entities' rights under the Subordination Agreements described above.

The nature of a PKPU restructuring proceeding

16 On 22 October 2021, PT Mitra Buana Korporindo, a creditor of Garuda Indonesia, filed a petition to commence a "*Penundaan Kewajiban Pembayaran Utang*" or "PKPU" proceeding (meaning "suspension of payments" proceeding) under Indonesian law. The petition (the "PKPU Petition") was filed in accordance with Law No 37 of 2004 on Bankruptcy and Suspension of Debt Repayment Obligations in Indonesia. Upon the filing of the PKPU Petition and commencement of the PKPU Proceeding, an automatic stay arose against all enforcement efforts by Garuda Indonesia's creditors against Garuda Indonesia and its assets.

17 The purpose of a PKPU proceeding is to aid a corporate debtor to prepare and propose to its creditors a composition plan to restructure the debts of the company, ultimately with the aim of avoiding the debtor's liquidation. Once a plan is prepared, it is presented and put to a vote by the creditors. The composition plan is deemed to be accepted if a simple majority in number of both the unsecured creditors and the secured creditors holding at least two-thirds

in value of the admitted unsecured and secured claims respectively vote in favour of the composition plan (the "Requisite Threshold"). Once the Requisite Threshold is reached, the composition plan will be presented to the court for homologation, *ie*, ratification, of the plan.

18 The PKPU Proceeding is, for all intents and purposes, a debtor-in-possession restructuring process where the debtor entity, in this case Garuda Indonesia, continues to retain the property to which the creditors may have a right, and to be responsible for the administration of its assets and day-to-day operations, subject to oversight by the administrators. Any decision made by the corporate debtor's board of directors in respect of the debtor's assets, including incurring further liabilities against those assets, however, is subject to approval by the administrators.

The PKPU Proceeding

19 On 9 December 2021, the Jakarta Commercial Court granted the PKPU Petition declaring Garuda Indonesia to be in temporary PKPU (the "Temporary PKPU Order") for an initial period of 44 days. A team of six administrators was appointed to oversee the restructuring. This signalled the commencement of the PKPU Proceeding. Despite the appointment of administrators to oversee the restructuring of Garuda Indonesia's debts, Garuda Indonesia's management continued to be responsible for its day-to-day as the PKPU Proceeding was a debtor-in-possession restructuring process, as noted earlier. A supervising judge from the Jakarta Commercial Court was appointed to oversee the PKPU Proceeding. The Temporary PKPU Order effectively suspended all of Garuda Indonesia's payment obligations for 44 days from the date of the decision. Thus, Garuda Indonesia was provided breathing space to work with its creditors and stakeholders to prepare a draft composition plan to facilitate the restructuring of

Garuda Indonesia's debts. The Temporary PKPU Order was subsequently extended for a further 152 days.

The Composition Plan

20 The development of the Composition Plan commenced shortly after the Temporary PKPU Order was granted. On 12 November 2021, Garuda Indonesia circulated a restructuring term sheet with the key commercial terms of the restructuring plan to its creditors (the "Draft Composition Plan"). A revised version of the Draft Composition Plan was circulated to the creditors on 17 November 2021 following further negotiations and comments by various creditors. Further meetings between Garuda Indonesia and its creditors took place between May and June 2022, during which the Draft Composition Plan was amended to accommodate additional concerns raised by the creditors.

21 The final version of the Draft Composition Plan was prepared after these negotiations concluded. Amongst other objectives, the Composition Plan sought to distribute a total of US$825m to Garuda Indonesia's creditors, including its preferred creditors, trade creditors and financing creditors. In addition, Garuda Indonesia would undertake a rights issue, the amount of which would be calculated pursuant to a prescribed formula in the Draft Composition Plan. All of this was done with the view of improving and enhancing Garuda Indonesia's financial performance by compromising the debts of all creditors whose debts had been admitted by Garuda Indonesia's administrators.

22 The Draft Composition Plan was subsequently put to a vote at a creditors' meeting on 17 June 2022. The creditors' meeting was by all accounts a success, with 95.07% of the admitted creditors attending representing 97.46% of the total value of the debt voting in favour of the Draft Composition Plan,

thereby satisfying the Requisite Threshold. The Composition Plan was subsequently homologated by the Jakarta Commercial Court on 27 June 2022 (the "Homologation Decision").

23 It is important to note that the Greylag Entities participated in the PKPU Proceeding. In particular, they had registered their claims by submitting their claim form to the administrators, negotiated with Garuda Indonesia regarding the terms of the Aircraft Leases, and made submissions and voted against the Composition Plan at the creditors' meeting on 17 June 2022.

Challenges by the Greylag Entities against the Composition Plan and the Homologation Decision

24 The Greylag Entities filed an appeal to the Supreme Court of the Republic of Indonesia (the "Indonesian Supreme Court") challenging the Homologation Decision. The appeal was advanced on two grounds. First, it was alleged that the debt which was admitted in the PKPU Proceeding was incorrect as certain aspects of the Greylag Entities' claim were not considered. Second, it was alleged that Garuda Indonesia had breached the Aircraft Subleases whilst the PKPU Proceeding was ongoing. The appeal was dismissed by the Indonesian Supreme Court on 26 September 2022. The dismissal of the appeal made the Composition Plan final and binding on Garuda Indonesia and its creditors. Accordingly, the Composition Plan was to be implemented by 1 January 2023.

25 Dissatisfied with the dismissal of the appeal, the Greylag Entities applied again to the Indonesian Supreme Court for a civil review of the court's decision to dismiss the appeal (the "Civil Review Application"). The objections raised in the Civil Review Application were similar to those raised in the appeal.

The Civil Review Application was also dismissed by the Indonesian Supreme Court on 16 August 2023.

26 Finally, the Greylag Entities filed an application to the Jakarta Commercial Court on 7 February 2023 to nullify the Homologation Decision based on an alleged breach of the Composition Plan (the "Nullification Application"). The objections and arguments raised by the Greylag Entities were similar to those raised in the appeal and the Civil Review Application. The Nullification Application was dismissed on 31 August 2023. The Greylag Entities filed an appeal against that decision on 8 September 2023 (the "Nullification Appeal"). The Nullification Appeal is pending before the Indonesian Supreme Court at the time of the hearing of OA 5.

27 It is common ground between the parties that save for the Nullification Appeal, which is pending, there are no further avenues for the Greylag Entities to challenge the Homologation Decision and the Composition Plan under Indonesian law.

Other insolvency proceedings involving Garuda Indonesia

28 For completeness, we note that besides OA 5, several other insolvency proceedings relating to Garuda Indonesia and Garuda France were commenced in various jurisdictions. We briefly detail them.

Proceedings before the SDNY

29 The first was an application filed in the United States (the "US") Bankruptcy Court for the Southern District of New York ("SDNY") on 23 September 2022 by the Applicants seeking recognition of the PKPU Proceeding and additional relief for recognition and enforcement of the

Composition Plan under 11 USC (US) §§ 1507 and 1521 (2005) (which we refer to as Chapter 15 of the US Bankruptcy Code). Following the filing of a limited objection by the Greylag Entities, the parties agreed to a consent order for the PKPU Proceeding to be recognised but which expressly excluded any additional relief, including enforcement of the Composition Plan in the US. The order was entered by the SDNY.

30 The Applicants then brought a separate application on 29 November 2022 seeking to enforce the Composition Plan in the US. The Greylag Entities also resisted this application on various grounds. On 24 May 2023, however, the Applicants withdrew the application. As it stands, therefore, there is no application for recognition of the PKPU Proceeding and consequent relief pending before the SDNY.

Proceedings in Australia

31 Two winding-up applications were filed against Garuda Indonesia in the Supreme Court of New South Wales ("NSWSC"). The first was an application brought by eight creditors on 4 June 2021. That application was discontinued on 11 August 2021.

32 The second was an application filed by the Greylag Entities on 15 August 2022 seeking to wind up Garuda Indonesia under s 583 of the Australian Corporations Act 2001 (Cth). That application was dismissed, with the NSWSC accepting Garuda Indonesia's defence premised on state immunity under the Australian Foreign States Immunities Act 1985 (Cth): see *Greylag Goose Leasing 1410 Designated Activity Co v PT Garuda Indonesia Ltd* [2022] NSWSC 1623.

Proceedings in France

33 Finally, the Greylag Entities brought two proceedings in the French courts. The first was a liquidation proceeding commenced on 17 August 2022 against Garuda France in the Paris Commercial Court on the basis that Garuda France was a debtor of the Greylag Entities. The application was dismissed on 25 November 2022.

34 The second was an application filed on 27 June 2022 in the Paris Civil Court seeking an attachment order of Garuda France's bank accounts. Garuda France applied to set aside the attachment order, and the application was allowed on 9 February 2023.

35 Having set out the background to the PKPU Proceeding, we turn to address the substantive issues in OA 5. However, before we do that, we first address the Greylag Entities' application for production of documents in SUM 34. We heard SUM 34 on the first day of the hearing of OA 5 and dismissed it, providing brief reasons then. Our full reasons are set out hereinafter.

SUM 34

36 The documents (collectively, the "Requested Documents") that the Greylag Entities sought production of may be classified based on the following categories:

(a) Documents describing the background and business purposes underlying Garuda Indonesia's decision to utilise the structure involving the Aircraft Headleases and Aircraft Subleases (see [11]–[15] above), including Garuda Indonesia's internal memoranda and board minutes,

as well as any reports of accountants and advisers to Garuda Indonesia (the "Commercial Background Documents").

(b) Documents showing: (i) the reasons for providing in the Composition Plan for the release of debts owed by Garuda France (the "Third-Party Release Provisions") as contained in any of the records of the PKPU Proceeding; and (ii) the reasoning and legal basis of the Third-Party Release Provisions as set out in in the Homologation Decision (the "Explanatory Records").

(c) The consolidated financial statements of Garuda Indonesia and its subsidiaries and the non-consolidated financial statements of Garuda Indonesia and Garuda France as of: (a) 31 December 2021; (b) 31 December 2022; and (c) the date on which the Greylag Entities' request to produce was filed, *ie*, 28 August 2023 (the "Financial Statements").

The parties' submission

37 SUM 34 was brought under O 12 r 4 of the Singapore International Commercial Court Rules 2021 (the "SICC Rules"). The parties' contentions as regards the disclosure of the Requested Documents turned on the materiality of the Requested Documents to the issues in OA 5. In our view, for the application to succeed, the Greylag Entities must show that the Requested Documents were sufficiently material to the issues raised, namely that the PKPU Proceeding should not be recognised for public policy reasons.

38 The Greylag Entities submitted that the Requested Documents were material because they related to the issue of whether enforcement of the Composition Plan would be in breach of Singapore public policy. These

documents purportedly supported the Greylag Entities' submission that the inclusion of the Third-Party Release Provisions in the Composition Plan was without adequate disclosure of information regarding Garuda France's financial position. This, in turn, precluded Garuda Indonesia's creditors from being able to make an informed decision before voting on the Draft Composition Plan, thus rendering the conduct of the PKPU Proceeding contrary to Singapore public policy.

39 The Applicants submitted that the Requested Documents were not material because they did not concern whether Garuda Indonesia's creditors had been provided with sufficient information to determine the impact of the Third-Party Release Provisions on their claims against Garuda France.

40 The Applicants further argued that SUM 34 was an abuse of process because:

(a) SUM 34 was filed in disregard of the procedures provided under O 12 of the SICC Rules. In particular, the Greylag Entities unilaterally issued the request to produce documents without obtaining leave or an order of the court as required under O 12 r 2 of the SICC Rules.

(b) SUM 34 was filed for the collateral purpose of delaying the resolution of OA 5.

Our decision on SUM 34

41 In our judgment, the Greylag Entities were not able to show how the Requested Documents were material to the issue of public policy.

42 Turning first to the Commercial Background Documents, the Greylag Entities submitted that these documents were material in identifying the nexus between the "business reasons" behind the Aircraft Leases (see [11]–[15] above) and the release of Garuda France under the Composition Plan. We did not agree with this submission. We struggled to see how the commercial purpose in organising the Aircraft Leases of the Aircraft in the way that Garuda Indonesia and Garuda France had done, had anything to do with the inclusion of the Third-Party Release Provisions in the Composition Plan. More importantly, we did not see how these documents were even related to the issue of public policy in so far as the Greylag Entities' complaint was that there was an inadequate disclosure of financial information contrary to the creditors' interests.

43 The Explanatory Records and Financial Statements were similarly not material. The Greylag Entities submitted that the common thread running through the Requested Documents was that they would show the reasons why the Third-Party Release Provisions were incorporated in the Composition Plan and whether those provisions were fair in the circumstances. We did not agree. The Explanatory Records were not material because the commercial reasons for including the Third-Party Release Provisions did not assist in understanding whether Garuda Indonesia's creditors received adequate financial disclosure or were treated equally. Similarly, in so far as the Financial Statements were requested to ascertain if the Composition Plan had been implemented and the purported financial impact of the recognition application sought by Garuda Indonesia in OA 5, we failed to see how this would be material to the issue of public policy raised by the Greylag Entities, namely the fair treatment of creditors and adequate disclosure of financial information. To this end, we accepted the Applicants' submission that the disclosure of the Financial

Statements after the Composition Plan had been voted upon had no bearing on whether there was in fact adequate disclosure at the time the Composition Plan was put to vote. That issue could be decided without disclosure of the Financial Statements.

44 Accordingly, we dismissed SUM 34 with costs to be determined following the conclusion of OA 5. As we were satisfied that SUM 34 should be dismissed on the ground that the Requested Documents were not material to the issues raised in OA 5, we did not think it necessary to consider the Applicants' alternative submission that SUM 34 should be dismissed as an abuse of process. We now turn to address the substantive issues in OA 5.

Objections raised by the Greylag Entities against recognition

45 We note at the outset that the Greylag Entities do not take issue with any of the formal and substantive requirements for recognition of a foreign proceeding in Article 17 of the Third Schedule. As noted above, they also do not contest that the jurisdiction where the PKPU Proceeding was conducted, *ie*, Indonesia, is where Garuda Indonesia has its "centre of main interest" ("COMI"). Accordingly, the PKPU Proceeding must be recognised as a "foreign main proceeding" within the meaning of Article 17(2)(*a*) of the Third Schedule.

46 As stated above, the Greylag Entities resist OA 5 on two grounds. First, they argue in their written submission filed on 12 April 2023 that OA 5 is premature in view of several outstanding proceedings. These include: (a) the various applications and appeals filed before the Indonesian courts (see [24]–[27] above) that if successful, would affect the foundation upon which the PKPU Proceeding was recognised and relief in terms of enforcement of the

Composition Plan was granted; and (b) the application brought by the Applicants before the SDNY seeking recognition and enforcement of the Composition Plan in the US under Chapter 15 of the US Bankruptcy Code, and which the Greylag Entities sought to resist.

47 We note that at the time of the hearing of OA 5, most of the objections and challenges have been dismissed by the Indonesian courts (save for the Nullification Appeal which is pending before the Indonesian Supreme Court (see [26] above)). Further, Garuda Indonesia has, on 24 May 2023, withdrawn its application before the SDNY to enforce the Composition Plan in the US (see [30] above). Given these developments, it is necessary for us to consider only the Nullification Appeal in determining the first of the Greylag Entities' objections relating to the prematurity of the application. However, we should add that counsel for the Greylag Entities, Mr Muralli Raja Rajaram ("Mr Rajaram") did not pursue this objection at the hearing of OA 5.

48 Turning to the second objection, the Greylag Entities submit that recognition of the PKPU Proceeding ought to be denied as it would be contrary to the public policy of Singapore under Article 6 of the Third Schedule for the following reasons:

> (a) The PKPU Proceeding and the voting on the Composition Plan were conducted without equitable treatment of the creditors. In particular, the Composition Plan allegedly favoured or prejudiced Garuda Indonesia's unsecured creditors by offering different terms to each creditor, such that the extent to which each unsecured creditor was favoured or prejudiced was dissimilar. Despite this dissimilarity in treatment, the Composition Plan was put to vote with all unsecured creditors placed in the same class.

(b) The PKPU Proceeding and the voting on the Composition Plan was conducted without adequate disclosure of information. The Composition Plan sought, amongst others, to release the debts of Garuda France despite it not being a party to the PKPU Proceeding. Despite this, the administrators of Garuda Indonesia failed to disclose information relating to the financial position of, *inter alios*, Garuda France. Thus, the Composition Plan was put to a vote without adequate financial disclosure.

49 We elaborate on the Greylag Entities' arguments on these two grounds in greater detail below.

Preliminary observations

50 Before we turn to our analysis on the objections raised by the Greylag Entities, we make three observations on OA 5.

Recognition of the PKPU Proceeding

51 Our first observation relates to the requirements for recognising foreign proceedings under the framework of the Third Schedule. As stated above, the Greylag Entities do not take issue with any of the formal and substantive requirements for recognition prescribed in Article 17 of the Third Schedule. We nevertheless consider whether the Applicants have satisfied the essential elements for recognition of the PKPU Proceeding, given that they bear the burden of establishing their case in OA 5.

52 Article 17 of the Third Schedule provides that the court must recognise a proceeding if:

(a) it is a foreign proceeding within the meaning of Article 2(*h*) of the Third Schedule;

(b) the foreign representative applying for recognition is a person or body within the meaning of Article 2(*i*) of the Third Schedule;

(c) the application meets the requirements of Articles 15(2) and (3); and

(d) the application has been submitted to the General Division of the High Court in Singapore.

53 Article 2(*h*) of the Third Schedule defines a "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.

54 In *United Securities Sdn Bhd (in receivership and liquidation) and another v United Overseas Bank Ltd* [2021] 2 SLR 950 ("*United Securities*"), the Court of Appeal recognised (at [53]) that the following cumulative requirements must be satisfied for a proceeding to qualify as a "foreign proceeding" under Article 2(*h*) of the Third Schedule:

(a) the proceeding must be collective in nature;

(b) the proceeding must be conducted under a law relating to insolvency or adjustment of debt;

(c) the property and affairs of the debtor company must be subject to control or supervision by a foreign court in that proceeding; and

(d) the proceeding must be for the purpose of reorganisation or liquidation.

55 Article 2(*f*) provides that a "foreign main proceeding" is a foreign proceeding taking place in the State where the debtor has its COMI. While the Third Schedule does not define what constitutes a debtor's COMI, Article 16(3) recognises the presumption that "the debtor's registered office is presumed to be the debtor's centre of main interests".

56 Turning to the facts of this matter, we are satisfied that these requirements are made out and that the PKPU Proceeding constitute a foreign main proceeding.

57 As described above (at [16]–[19]), the PKPU Proceeding is a judicial proceeding taking place under the supervision of the Jakarta Commercial Court. The legal basis for the proceeding is Law No 37 of 2004 on Bankruptcy and Suspension of Debt Repayment Obligations, which is the relevant insolvency legislation under Indonesian law that prescribes the requirements and conditions for authorising and eventually sanctioning the PKPU Proceeding. The proceeding pertains to the adjustment of the debt of all of Garuda Indonesia's and, amongst others, Garuda France's creditors as evident from the Composition Plan, and therefore considers the rights and obligations of all creditors. Finally, as we noted at [6] above, Garuda Indonesia's registered office is located in Indonesia. The PKPU Proceeding therefore falls within the definition of a "foreign main proceeding".

58 We are also satisfied that the Applicants are persons falling within the definition of a "foreign representative" as defined in Article 2(*i*) of the Third

Schedule, and that Articles 15(2) and 15(3) of the Third Schedule are satisfied at the time of OA 5.

59 Accordingly, we accept the Applicants' submission that, barring the Greylag Entities' objections raised under Article 6 of the Third Schedule, the PKPU Proceeding ought to be recognised as a foreign main proceeding.

The Gibbs Rule

60 Our second observation relates to the rule of considerable vintage recognised by the Court of Appeal of England and Wales in *Antony Gibbs & Sons v La Société Industrielle et Commerciale des Métaux* (1890) 25 QBD 399 ("the *Gibbs* Rule"). Simply put, the *Gibbs* Rule states that a discharge of a debt is not effective unless it is in accordance with the law governing the debt. The *Gibbs* Rule thus creates a barrier against recognition of a foreign proceeding and/or a foreign restructuring plan and/or judgment, where such proceeding and the fruits of that proceeding involve the compromise or discharge of a debt governed by foreign law. In the present case, the Composition Plan involves the compromise of debts owed by Garuda Indonesia and, amongst others, Garuda France to the Greylag Entities under the Aircraft Leases which are governed by New York law.

61 We note, however, that the parties rightly do not contend that the *Gibbs* Rule is applicable in the present case. This is because the present case falls squarely within the exception to that rule, namely that 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: see *Global Distressed Alpha Fund 1 Ltd Partnership v PT Bakrie Investindo* [2011] 1 WLR 2038 at [31]. Here, it is common ground that

the Greylag Entities fully participated in the PKPU Proceeding. The evidence shows that the Greylag Entities had registered their claims with Garuda Indonesia's administrator by way of claim forms dated 5 January 2022. They were also kept in the loop on developments on the Composition Plan and voted against it at the creditors' meeting on 17 June 2022. By their conduct, the Greylag Entities had submitted to the jurisdiction of the Indonesian courts in the PKPU Proceeding. Having done so, they are now precluded from asserting that they are not bound by the Composition Plan by virtue of the *Gibbs* Rule.

62 In any case, we note that the High Court has in *Re Pacific Andes Resources Development Ltd and other matters* [2018] 5 SLR 125 examined the soundness of this rule in the context of modern cross-border insolvency, and we agree with the analysis made therein. For present purposes, however, and given that OA 5 does not engage any issues relating to this rule, we say no more on the issue.

The approach to recognition of foreign proceedings

63 Our final observation relates to the court's approach to hearing a recognition proceeding. We think it appropriate to consider this because an awareness of the underlying principles guiding the court's approach on recognition is crucial in shaping our analysis of the arguments raised by the Greylag Entities against recognition of the PKPU Proceeding.

64 We begin by noting the following remarks of the General Division of the High Court in *Re Rams Challenge Shipping Pte Ltd and other matters* [2023] 3 SLR 787 ("*Re Rams*") concerning the scope of the recognition of foreign proceedings and court orders (at [10]):

> … there may be some outer boundaries, beyond which recognition may not be accorded. The precise limits would

> remain to be examined in subsequent cases. What is important to my mind is that a foreign order does not operate substantially outside what might properly be regarded as the proper purview of an insolvency or restructuring effort, though the modalities and detailed scope may differ from jurisdiction to jurisdiction. *A strict analogy or parallel with Singapore insolvency or restructuring regimes is not necessary. I suspect most insolvency or restructuring orders the world over will be readily accommodated, though there may be outliers*. Public policy considerations also may come into play. Otherwise, in most instances, the main consideration is the opportunity for local creditors to participate or be heard in the process: *Re Tantleff* at [78]; *In re CGG SA* 579 BR 716 (Bankr SDNY, 2017) at 720.
>
> [emphasis in italics]

65 We agree with the observation in *Re Rams*, which in our view is consistent with the Model Law's efforts to advance the principle of modified universalism as noted in Roy Goode & Kristin Van Zwieten, *Goode on Principles of Corporate Insolvency Law* (Sweet & Maxwell, 5th Ed, 2018) ("*Goode on Insolvency Law*") (at para 16–07):

> The current trend, as exemplified by the UNCITRAL Model Law on Cross-Border Insolvency … is clearly in favour of a modified universalist approach, albeit with rather more territorial elements than may have been envisaged by the proponents of that approach. The key universalist elements are: (i) the concept of main proceedings in the State where the debtor has its COMI; … (iii) overall control of the insolvency process by the office-holder in the main proceedings; (iv) treatment of all of the debtor's assets worldwide as constituting the estate administered by that office-holder; (v) the provision of assistance by local courts in the recovery of assets and pursuit of claims by the office holder in the main proceedings, and access of office holders to foreign courts. But some leeway is also given to the concept of territoriality to accommodate the legitimate expectations of local creditors in relation to local assets. Thus the opening of territorial proceedings is permitted in a State where the debtor has an establishment or assets although having its COMI elsewhere but the proceedings are limited to local assets, and will be governed by the local lex concursus, whose priority rules will continue to apply. So local creditors will preserve their rights and priorities under local law, while foreign creditors will be able to participate in the insolvency proceedings on an equal footing but on the basis of

> local law, not the law by which their rights would otherwise be governed.

66 In *In re HIH Casualty and General Insurance Ltd* [2008] 1 WLR 852 ("*HIH Casualty*"), the House of Lords opined that modified universalism, regarded as a principle of private international law, required that bankruptcy (whether personal or corporate) should be unitary and universal. Thus, national courts should, as far as is consistent with justice and the public policy of their States, strive to administer the estate of an insolvent company in cooperation with the court of the jurisdiction of the principal liquidation of the debtor, typically its place of incorporation. In Lord Hoffmann's words (see *HIH Casualty* at [6]):

> Despite the absence of statutory provision, some degree of international co-operation in corporate insolvency had been achieved by judicial practice. This was based upon what English judges have for many years regarded as a general principle of private international law, namely that bankruptcy (whether personal or corporate) should be unitary and universal. There should be a unitary bankruptcy proceeding in the court of the bankrupt's domicile which receives worldwide recognition and it should apply universally to all the bankrupt's assets.

67 Thus, the goal of modified universalism is to ensure that all of the company's assets are distributed to its creditors under a single system of distribution. The Model Law gives effect to the principle of modified universalism through a procedural framework which not only permits but encourages cooperation and coordination between jurisdictions in cases of cross-border insolvencies: see *Goode on Insolvency Law* at para 16–07 cited above. Indeed, the principles of cooperation and coordination form one of the four key pillars of the Model Law's architecture: see *UNCITRAL Model Law on Cross-Border Insolvency Law with Guide to Enactment and Interpretation*, UN Sales No E.14.V.2 (2014) ("*2013 Guide*") at pp 26–27.

68 That the Model Law's focus is on providing an effective procedural framework for cooperation and coordination, instead of the unification of substantive insolvency law (see *UNCITRAL Model Law on Cross-Border Insolvency: The Judicial Perspective*, UN Sales No 23.V.I (2022) ("*The Judicial Perspective*") at para 9), is premised on the reality that the insolvency regime in each State is designed to respond to and achieve its various unique economic and social policy objectives: see *UNCITRAL Practice Guide on Cross-Border Insolvency Cooperation*, UN Sales No E.10.V.6 (2010) at pp 9–10. Consequently, it is important, indeed necessary, to strike a balance between ensuring a coordinated and orderly management of creditors' claims and the distribution of assets involving a single debtor company operating in more than one jurisdiction on the one hand and maintaining the integrity of and respecting the insolvency legal framework of each State on the other.

69 Put another way, modified universalism recognises that there are differences in the insolvency laws and procedures of each State but takes the view that such differences should not stand in the way of the recognition of foreign insolvency proceedings and the benefits that would accrue to creditors as a collective whole through a global effort to coordinate the distribution of assets in a cross-border collapse.

70 A corollary of this is the principle of comity. In the context of cross-border insolvency, the principle of comity (alongside cooperation) is paramount. It is "the recognition which one nation allows within its territory to the legislative, executive or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens or of other persons who are under the protection of its laws": *Hilton v Guyot*, 159 U.S. 113, 164 (1895) (see also *The Reecon Wolf* [2012] 2 SLR 289 at [23], citing *Morguard Investments Ltd v De Savoye* [1990] 3 SCR 1077 at 1096).

Thus, the US Supreme Court in *Canada Southern Ry. Co. v. Gebhard*, 109 U.S. 527 (1883) stated (at 539) that "the true spirit of international comity requires that [an insolvency proceeding], legalized at home, should be recognized in other countries".

71 Consistent with these principles, a key aspect of comity requires that courts eschew an inquiry into the substantive merits of foreign law and the findings made by the foreign court in the foreign proceedings. This aspect of comity finds expression in the Court of Appeal's statement in *Ascentra Holdings, Inc (in official liquidation) and others v SPGK Pte Ltd* [2023] 2 SLR 421 ("*Ascentra*"), where it was held (at [97]) that "a light threshold should be imposed for recognition, which can then be tempered by granting recognition or relief subject to the imposition of appropriate conditions". Although this was said in the context of considering whether Article 2(*h*) of the Third Schedule and in particular the words "under a law relating to insolvency or adjustment of debt", require that recognition be granted only where the foreign proceeding involved a company that is either insolvent or in severe financial distress, we think this reflects the broader view that the application of foreign insolvency laws by the foreign court and the findings reached there should ordinarily be respected by the courts of the jurisdiction where recognition is sought: see *The Judicial Perspective* at paras 42 and 53.

72 In this connection, counsel for the Applicants, Mr Emmanuel Duncan Chua ("Mr Chua"), submits that if the foreign insolvency proceeding sought to be recognised adheres to a set of minimum standards or requirements, such as the proper constitution of proceedings, adequate creditor and shareholder protection, and the accordance of due process, the courts should give full effect to such proceedings and orders. We agree, although we hasten to add that this is not an exhaustive list and a court hearing a recognition application ought to

be sensitive to any other potential public policy objections (as discussed at [96] below). But this general view is nevertheless consistent with the views expressed by Chief Judge Martin Glenn ("Chief Judge Glenn") in the SDNY in *In re Modern Land (China) Co Ltd* 641 BR 768 (albeit in a slightly different context) that (at 776):

> [p]rovided that the foreign court properly exercises jurisdiction over the foreign debtor in an insolvency proceeding, and the foreign court's procedures comport with broadly accepted due process principles, a decision of the foreign court approving a scheme or plan that modifies or discharges New York law governed debt is enforceable.

73 With these principles in mind, we turn to consider the objections raised by the Greylag Entities under Article 6 of the Third Schedule.

The issues in OA 5

74 The Greylag Entities' objections against recognition of the PKPU Proceeding and the grant of relief by recognising and enforcing the Composition Plan raise the following issues:

(a) Whether recognition of the PKPU Proceeding should be denied on the basis that the application was brought prematurely in light of pending proceedings before the Indonesian courts (the "Premature Application Objection").

(b) Whether recognition of the PKPU Proceeding should be denied on the basis that it would breach Singapore public policy (the "Public Policy Objection").

(c) If recognition is granted, whether the court ought to grant the additional relief of recognising and enforcing the Composition Plan

under Article 21 of the Third Schedule and if so, the appropriate terms of the orders to be granted reflecting such relief (the "Relief Issue").

The Premature Application Objection

75 As stated above, the Greylag Entities' position under the Premature Application Objection is premised solely on the pending Nullification Appeal before the Indonesian Supreme Court. In our judgment, there is little force in the objection.

76 To begin, the Greylag Entities have not referred us to any relevant provision in the Third Schedule in support of the objection. Indeed, there is simply no legal basis for objecting as such. On the contrary, the Greylag Entities' submission runs counter to the mandatory effect of giving recognition to a foreign proceeding once the requirements in Article 17 of the Third Schedule (see [52] above) are satisfied. This is clear from the language of Article 17 which provides that the foreign proceeding "*must* be recognised" [emphasis added]. Moreover, the *2013 Guide*, which is relevant to interpreting the Third Schedule (see *Re Zetta Jet Pte Ltd and others (Asia Aviation Holdings Pte Ltd, intervener)* [2019] 4 SLR 1343 at [37]), states (at paras 150–151) that recognition is "limited to the jurisdictional pre-conditions" set out in Article 17 and "will be granted as a matter of course" once those pre-conditions are met.

77 We accept the Applicants' submission that Article 17 of the Third Schedule does not require a foreign proceeding to be concluded, or that all avenues of appeal and review must be exhausted in the foreign jurisdiction before an application for recognition of the foreign proceeding is brought. A recognition application may be brought under the Third Schedule soon after the commencement of the foreign proceeding. There is a clear necessity for the

recognition application to be concluded as expeditiously as possible. This, in our view, is consistent with the practical effect of Article 17.

78 The Greylag Entities' position fails to recognise that Article 17(4) was included in the Model Law (and in the Third Schedule), in part, precisely to deal with the situation where a foreign proceeding is subsequently terminated by the foreign court. Article 17(4) of the Third Schedule reads:

> The provisions of Articles 15 to 16, this Article and Article 18 do not prevent modification or termination of recognition *if it is shown that the grounds for granting it were fully or partially lacking or have fully or partially ceased to exist*; and in such a case, the Court may, on the application of the foreign representative or a person affected by the recognition, or of its own motion, modify or terminate recognition, either altogether or for a limited time, on such terms and conditions as the Court thinks fit.
>
> [emphasis added]

79 As the *2013 Guide* makes clear (at paras 164–165), recognition of a foreign proceeding is "subject to review or recission" and this "may be a consequence of a change of circumstances after the decision on recognition". Thus, a recognition application granted by the Singapore courts can always be terminated if the substratum for granting that application no longer exists, such as where the order commencing the foreign proceeding has been reversed by an appellate court in the foreign State: see *The Judicial Perspective* at para 61(b).

80 For these reasons, we do not accept the Greylag Entities' submission that the Nullification Appeal is a bar to the recognition of the PKPU Proceeding and enforcement of the Composition Plan as a consequent relief. In the event the Greylag Entities succeed in the Nullification Appeal, it is open to them to make an application to this court under Article 17(4) of the Third Schedule to

request termination of both the recognition of the PKPU Proceeding and any ancillary reliefs granted in support of recognition.

The Public Policy Objection

Article 6 of the Third Schedule

81 The architecture of the Model Law is structured in a way that seeks to facilitate the efficient recognition of foreign proceedings. Consistent with this objective are the limited avenues for resisting a recognition application. One such avenue is found in Article 6 of the Third Schedule, which reads:

> **Article 6. Public policy exception**
>
> Nothing in this Law prevents the Court from refusing to take an action governed by this Law if the action would be contrary to the public policy of Singapore.

82 We observe that Article 6 of the Third Schedule is different from Article 6 of the Model Law in only one respect – the omission of the word "manifestly" before the words "contrary to public policy". The drafters of the Model Law included the term "manifestly" to emphasise that "public policy exceptions should be interpreted restrictively, and that Article 6 of the Model Law is only intended to be invoked in exceptional circumstances concerning matters of fundamental importance for the enacting State": see *2013 Guide* at para 104; see also *The Judicial Perspective* at para 52. The absence of the word "manifestly" in Article 6 of the Third Schedule may seem to suggest Parliament's intention that a lower threshold should apply for denying recognition on the public policy ground. The question that arises therefore under the Public Policy Objection is the standard which the court should adopt in examining an objection against recognition and relief premised on Article 6 of the Third Schedule.

83 In this regard, the Greylag Entities refer to *Re Zetta Jet Pte Ltd and others* [2018] 4 SLR 801 ("*Zetta Jet*"), a decision in which the General Division of the High Court had the occasion to consider the effect of Article 6 of the Third Schedule. The court observed that there was no indication in the Parliamentary debates or any preparatory material to explain the omission of the word "manifestly", and that the omission "had to be deliberate and conscious" in light of the drafter's emphasis on the importance of the word "manifestly": see *Zetta Jet* at [22]. The omission therefore suggests, in the view of the court in *Zetta Jet* (at [23]):

> … the standard of exclusion on public policy grounds in Singapore is lower than that in jurisdictions where the Model Law has been enacted unmodified. That is, in Singapore, recognition may be denied on public policy grounds though such recognition may not be manifestly contrary to public policy.

Accordingly, the Greylag Entities submit a lower threshold applies and a mere breach of public policy is sufficient to deny recognition.

84 We are of the view that the omission of the word "manifestly" does not necessarily mean that the threshold for denying recognition on public policy grounds under Article 6 of the Third Schedule ought to be lower than under Article 6 of the Model Law. While we agree with the court in *Zetta Jet* that the word "manifestly" may be regarded as a deliberate omission, that alone is insufficient to conclude that a lower threshold for finding a breach of public policy was intended.

85 We begin by noting that, as prescribed in s 252(2) of the IRDA, in interpreting provisions of the Third Schedule, regard may be had to documents forming part of the record on the preparation of the UNCITRAL Model Law, as well as the *Cross-Border Insolvency: Guide to Enactment of the UNCITRAL*

Model Law on Cross-Border Insolvency, 30th Sess, UN Doc A/CN.9/442 (1997) (the "*1997 Guide*"). Furthermore, the *2013 Guide* may be considered where the *1997 Guide* is silent and to the extent that there is no conflict: see *Ascentra* at [47].

86 The starting point is the distinction drawn in the *1997 Guide* and the *2013 Guide* between two conceptions of public policy. The first is public policy as defined and understood in the domestic context, which refers to mandatory rules of national law. We term this as "domestic public policy". The second is a more restricted conception of public policy as considered when dealing with the application of foreign law, or the recognition of a foreign court judgment/order or an international arbitral award. In this context, public policy takes on a narrower scope and relates only to fundamental principles of law. We term this as "fundamental public policy".

87 Both the *1997 Guide* and the *2013 Guide* state that where matters of international cooperation and the recognition of the effects of foreign laws are concerned, it is fundamental public policy that is pertinent. This is because "international cooperation would be unduly hampered if public policy would be understood in an extensive manner [*ie*, in the sense of domestic public policy]": see *1997 Guide* at para 88 and the *2013 Guide* at para 103. With this in mind, both documents state that the inclusion of the term "manifestly" as a qualifier to the expression of "public policy" was to "*emphasize* that public policy exceptions should be interpreted restrictively and that Article 6 is only intended to be *invoked under exceptional circumstances concerning matters of fundamental importance for the enacting State*" [emphasis added]: see *1997 Guide* at para 89 and the *2013 Guide* at para 104.

88 It is therefore clear that the inclusion of the term "manifestly" is not meant to affect in any way the standard of "public policy" as contemplated and applied in Article 6 of the Model Law. Rather, its inclusion is to make explicit what was always implicitly understood to be the test when a public policy objection is raised as a challenge to the recognition, namely that a high threshold has to be met before recognition is refused. Put another way, the word "manifestly" does not add any further depth to the requirement but is simply included for the purposes of erasing doubt and giving clarity: see *Re Agrokor DD* [2018] 2 BCLC 75 at [109]. We therefore respectfully disagree with the decision in *Zetta Jet* that Parliament intended a lower threshold by removing "manifestly" in Article 6 of the Third Schedule.

89 If as we have stated at [66] above the purpose of the Model Law is to advance the goals of modified universalism, one facet of this must be to require a high threshold before finding the recognition of a foreign proceeding to be in breach of Singapore public policy under Article 6 of the Third Schedule. Such a high threshold is also necessitated by the notion of comity as discussed at [63]–[72] above.

90 That these principles and policy objectives are relevant to interpreting Article 6 of the Third Schedule is further supported by Article 8 of the Third Schedule, which states:

> **Article 8. Interpretation**
>
> In the interpretation of this Law, regard is to be had to its international origin and to the need to *promote uniformity in its application* and the observance of good faith.
>
> [emphasis]

91 Article 8 of the Third Schedule thus reinforces the need, when interpreting the provisions of the Third Schedule, to ensure that the resulting interpretation promotes both the purpose and objective of the Model Law and the goals of achieving uniformity and consistency in its application. To this end, the *2013 Guide* notes that including Article 8 in the Model Law ensures that "a State enacting a model law would have an interest in its harmonized interpretation": see *2013 Guide* at para 106. This, in turn, furthers the goals of cooperation and promotion of greater legal certainty in cross-border insolvency proceedings.

92 Indeed, the interpretative trend amongst various foreign jurisdictions has recognised that Article 6 of the Model Law is to be applied restrictively: see, *eg*, *In re Ernst & Young, Inc.*, 383 BR 773, 781 (Bankr D Colo 2008); *Re OGX Petróleo e Gás SA, Nordic Trustee ASA and another v OGX Petróleo e Gás SA (Em Recuperação Judicial) and another* [2017] 2 All ER 217 at [44]–[45]. While we note that the relevant legislation in these jurisdictions include the word "manifestly" under their equivalent of Article 6 of the Model Law, as stated above we do not think that this ought in any way to affect the applicable standard that should be adopted in scrutinising any challenges on public policy grounds. In line with the principles of interpretation set out under Article 8 of

the Third Schedule, therefore, a challenge brought under Article 6 of the Third Schedule on the ground of public policy will succeed only in limited circumstances.

93 We make one final point. The narrow conception of fundamental public policy also features in international arbitration. In particular, Article 34(2)(*b*)(ii) of the UNCITRAL Model Law on International Commercial Arbitration permits the setting aside of a Singapore-seated international arbitral award where "the award is in conflict with the public policy of [Singapore]". Article V(2)(a) of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards similarly states that recognition and enforcement of a foreign arbitral award may be refused if the recognition court finds that "the recognition or enforcement of the award would be contrary to the public policy of that country". Despite the absence "manifestly" it is well accepted that where enforcement of a foreign arbitral award is resisted on public policy grounds, the public policy objection in question must involve either "*exceptional circumstances* … which would justify the court in refusing to enforce the award" or a violation of "the most basic notions of morality and justice" [emphasis added]: see *AJU v AJT* [2011] 4 SLR 739 at [38]. Indeed, this position was affirmed more recently by the Court of Appeal in *Bloomberry Resorts and Hotels Inc and another v Global Gaming Philippines LLC and another* [2021] 2 SLR 1279 at [162], where the court held that "[t]he public policy objection pitched at a high threshold is thus necessarily of a narrow scope". This position adopted therefore reflects the view that where arbitral awards are concerned, any ground of opposition premised on public policy will be upheld only in limited circumstances. This may perhaps explain why Parliament did not think it necessary to include the word "manifestly" when adopting Article 6 of the Model Law – simply because it is well-understood that where references to

"public policy" in the context of foreign law and international awards or judgments are concerned, any challenge against the application thereof must be subject to a high threshold.

94 Accordingly, we hold that the threshold for establishing the public policy exception under Article 6 of the Model Law is a high one. To this end, we agree with the Applicants' submission that applying a low threshold under Article 6 of the Third Schedule would permit creditors to stultify recognition proceedings on the basis of alleged breaches of public policy, however insignificant. This would allow a convenient escape route from recognition which would only serve to defeat modified universalism and is detrimental to the fair and efficient administration of cross-border insolvencies, the protection of creditor interests, the protection and maximisation of value, the protection of investment and the preservation of jobs.

95 It therefore follows that any successful challenge against recognition on the basis of Article 6 of the Third Schedule must be narrow in scope; such a challenge will succeed only if the recognition and the grant of relief is contrary to the fundamental public policy of Singapore. We do not propose to state exhaustively the grounds of challenge, neither is it appropriate to do so. We venture to suggest, however, that the courts must be sensitive to procedural and substantive differences between domestic insolvency laws and foreign insolvency laws. The fact that foreign insolvency laws and procedures operate differently from what is normally expected and experienced in the domestic insolvency regime cannot, without more, give rise to a finding that the foreign proceeding is abhorrent and contrary to Singapore public policy: see *Stocznia Gdynia SA v Bud-Bank Leasing SP* [2010] BCC 255 at [27]. Consonant with this view, we also think that the framework under the Third Schedule cannot be used as a device through which a domestic court scrutinises the substantive

merits of a foreign insolvency court's decisions. Indeed, nothing in the Model Law's framework requires that a recognition court delve into the merits of a foreign insolvency proceeding. It would be undesirable to do so and contrary to the view that a recognition proceeding is a light-touch process.

96 The situations where challenges brought under Article 6 of the Third Schedule are likely to succeed, may include the following (without being comprehensive):

(a) where recognition is sought in respect of a foreign proceeding commenced in breach of a moratorium over legal proceedings (see, *eg*, *In re Gold and Honey, Ltd* 410 BR 357 (2009));

(b) where the relief sought under the Model Law is prohibited in the forum state or where compliance with orders for such reliefs would open individuals to criminal prosecution (see, *eg*, *In re Toft*, 453 BR 186 (Bankr SDNY 2011));

(c) where the foreign representatives acted in bad faith or failed to make full and frank disclosure of material facts to the receiving court (see, *eg*, *In re Creative Finance Ltd. (In Liquidation)*, 2016 BL 8825 (Bankr SDNY Jan 13, 2016));

(d) where recognition is sought of a foreign proceeding commenced in breach of the recognising court's order granted in a prior proceeding (see *Zetta Jet* at [25]); or

(e) where there is a failure to accord due process to the creditors and other relevant stakeholders in the foreign insolvency process.

97 The last situation is especially relevant to OA 5 and we discuss this further at [99]–[101] below.

98 We also venture to tentatively suggest that Singapore public policy may also be engaged where the insolvency proceedings or foreign court orders are tainted by fraud. This is consistent with the position expressed by the High Court of England and Wales in *Re Dalnyaya Step LLC (in liquidation); Cherkasov and others v Nogotkov (Official Receiver of Dalnyaya Step LLC (in liquidation))* [2017] EWHC 3153 (Ch) (at [89]), in the context of determining whether a foreign representative's failure to provide full and frank disclosure to the recognising court regarding allegedly fraudulent activities surrounding the liquidation of the foreign company, that such potential fraudulent activities may constitute grounds for invoking the public policy objection under Article 6 of the Cross-Border Insolvency Regulations 2006 (SI 2006 No 1030) (UK) ("CBIR 2006"). Once again, while we note that Article 6 of the CBIR 2006 includes the word "manifestly", we do not think this changes the analysis for the reasons given at [84]–[94] above.

99 We turn to the requirement of due process. As stated above, this is especially relevant to OA 5. It is not disputed by the parties that creditors participating in a foreign proceeding must be accorded due process, and that this is a fundamental tenet of Singapore public policy. Indeed, in the context of a financially distressed or insolvent company, the interests of creditors assume central importance in the operation of the company. It is thus paramount that the creditors be notified of and be actively engaged in the steps that are being considered, whether that be to proceed with a corporate restructuring of the company's debts, or its liquidation and eventual distribution of assets on a *pari passu* basis. As Chief Judge Glenn observed in *In re Agrokor d.d* 591 BR 163 (Bankr SDNY 2018) (at 184–185):

> A single court should resolve all claims to property of the debtor, which necessarily requires that the court resolve all creditor claims that have been, or could have been, asserted, provided that the creditors have received the notice required by due process.

100 To this end, we agree with the United States Court of Appeal for the Second Circuit's holding in *Finanz AG Zurich v Banco Economico SA*, 192 F.3d 240 (2d Cir. 1999) that several key indicia of procedural fairness include (at 249):

> (1) whether creditors of the same class are treated equally in the distribution of assets; (2) whether the liquidators are considered fiduciaries and are held accountable to the court; (3) whether creditors have the right to submit claims which, if denied, can be submitted to a bankruptcy court for adjudication; (4) whether the liquidators are required to give notice to the [debtor's] potential claimants; (5) whether there are provisions for creditors meetings; (6) whether a foreign country's insolvency laws favor its own citizens; (7) whether all assets are marshalled before one body for centralized distribution; and (8) whether there are provisions for an automatic stay and for the lifting of such stays to facilitate the centralization of claims.

101 Crucial to the principle of due process is the requirement that creditors be accorded the right to receive notice and to be accorded an opportunity to participate in the relevant insolvency proceedings and to have their views heard: see *In re Sivec Srl*, Case No. 11-80799-TRC, 2011 WL 3651250, at 3 (Bankr. E.D. Okla. 2011). Thus, in *In re Avanti Commc'ns Grp. PLC*, 582 BR 603 (Bankr SDNY 2018) ("*Avanti*"), Chief Judge Glenn recognised and enforced a scheme of arrangement, including a release of third-party guarantees, that was approved by creditors and by the High Court of England and Wales after being satisfied that "Avanti's Scheme Creditors had a full and fair opportunity to vote on, and be heard in connection with, the Scheme": see *Avanti* at 618.

102 Also, we are of the view that the opportunity to be heard requires there be proper disclosure of relevant documents to creditors to enable them to make an informed decision when participating in the foreign insolvency proceedings. As we shall elaborate below, this aspect of due process is part of the broader requirement that creditors participating in foreign proceedings must be treated fairly.

103 With these principles in mind and having considered the parties' submissions, it becomes clear that the factual and legal premises underlying the Public Policy Objection are unsustainable. This is because: (a) the facts do not, on closer inspection, raise any concerns regarding due process rights as the Greylag Entities allege; and (b) as will be discussed in detail below, the Public Policy Objection is in substance directed at the content of substantive Indonesian insolvency laws and the merits of the Homologation Decision. In short, the challenges raised are primarily on the merits disguised as public policy objections.

The alleged unfair treatment of creditors

104 We turn to the first point raised by the Greylag Entities, namely that the PKPU Proceeding was conducted, and the resulting Composition Plan procured without the creditors being treated fairly and equitably and contrary to their expectations that due process would be accorded. We note that this objection was pursued with the greatest force by the Greylag Entities in its oral submissions.

The fair and equitable treatment of creditors

105 In our view, the fair and equitable treatment of creditors is a fundamental tenet of Singapore public policy. Indeed, this flows from the universally

recognised and accepted principle that the collective interest of creditors assumes central importance in the case of a financially distressed or insolvent company. The fair and equitable treatment of creditors is a principle that was considered by Aedit Abdullah JC (as he then was) in *Re Taisoo Suk (as foreign representative of Hanjin Shipping Co Ltd)* [2016] 5 SLR 787 ("*Re Taisoo Suk*"). That case involved an application for recognition brought under the common law regime, and Abdullah JC considered that a foreign rehabilitation proceeding should not be recognised if, amongst other requirements (at [20]):

> … those proceedings would lead to a result that would be unfair to the creditors as a whole, or which would not facilitate the orderly rehabilitation of the company. The primary factor is in the fairness of the process, particularly as regard the treatment of creditors. Foreign or international creditors should be treated fairly and equitably; any preference for domestic creditors or those of a particular group may be a strong reason for a court to decline recognition and assistance. Fairness would also encompass proper due process, which in this context would mean proper communication of plans and proposals, as well as the real possibility of participation in meetings by creditors: sufficient time and material must be given for due consideration by the creditors, including foreign or international creditors. The court will not, however, be so fastidious in the requirement of equality of creditors that it will not be practical at all to carry out the rehabilitation. Much will depend on the circumstances. Time will often be a considerable constraint, but as long as there are reasonable measures to ensure fair treatment, it is unlikely that the court will decline to recognise or assist.

106 We agree with the passage above in *Re Taisoo Suk*. The safeguarding of creditors' interest requires that the court scrutinises whether the creditors have been accorded fair and equitable treatment of creditors by being able to participate meaningfully in the insolvency process. This is an aspect of their due process rights as stated at [101] above. We hasten to add, however, that not every perceived form of unfairness in the treatment of creditors would be sufficient to establish a breach of Singapore public policy. It is necessary for the

party alleging a breach to clearly articulate how their right to fair and equitable treatment was violated.

107 In evaluating whether there has been a breach of the right to fair and equitable treatment, we reiterate the observations made at [63]–[72] above regarding the approach to recognition of foreign proceedings. The focus is not on substantive law but on procedural fairness. And even in matters of procedure, the foreign proceedings need not mirror Singapore law. Without being exhaustive, the question is whether the affected creditors had a full and fair opportunity to vote, were given adequate disclosure of information to aid them in making an informed vote and had a full and fair opportunity to be heard in the foreign proceedings in a manner consistent with the standards of due process under Singapore law.

The Greylag Entities' submissions

108 Turning to the circumstances surrounding the PKPU Proceeding, the Greylag Entities submit that the lack of proper classification of unsecured creditors for the purposes of voting on the Composition Plan evinces the unfair treatment of unsecured creditors. Their argument proceeds as such.

109 The need for proper classification of creditors in a restructuring proceeding conducted under Singapore law was emphasised by the Court of Appeal's decisions in *Pathfinder Strategic Credit LP and another v Empire Capital Resources Pte Ltd and another appeal* [2019] 2 SLR 77 ("*Pathfinder*") and *Wah Yuen Electrical Engineering Pte Ltd v Singapore Cables Manufacturers Pte Ltd* [2003] 3 SLR(R) 629 ("*Wah Yuen*").

110 The Greylag Entities submit that proper classification of Garuda Indonesia's unsecured creditors into further sub-classes was necessary as the

terms offered to each of Garuda Indonesia's creditors under the Composition Plan (and hence the extent to which their rights under the Composition Plan as compared to an event of an insolvency were favoured or prejudiced) differed significantly. In particular, there are three aspects of the Composition Plan which the Greylag Entities contend where differential treatment was accorded and which therefore warranted different classification.

111 The first is the different terms offered to unsecured creditors who were aircraft lessors, such as the Greylag Entities. The Composition Plan offered to such creditors the option of terminating the existing aircraft lease agreement *ie*, the Aircraft Leases in the case of the Greylag Entities. Should the affected creditor refuse this option, the Composition Plan then offered these creditors the following alternative options:

(a) The first option, which was offered only to *selected* creditors, was the opportunity to continue the commercial relationship with Garuda Indonesia and be included in Garuda Indonesia's "Go-Forward Fleet" programme.

(b) The second option, which was available to creditors not included under the "Go-Forward Fleet" programme, was the "Alternative Lease Agreements". Under this option, the affected creditors would propose alternative lease arrangements to Garuda Indonesia which Garuda Indonesia had the option of rejecting.

112 Should the creditors not elect either option, the Composition Plan provided that the relevant aircraft lease would be terminated subject to the terms provided in the Composition Plan. The Greylag Entities allege that the manner

in which the aircraft lessors were differentiated evidenced Garuda Indonesia's preference for selected unsecured creditors over others.

113 The second relates to Garuda Indonesia's conduct of engaging in private negotiations with selected unsecured creditors pursuant to the alternative leasing arrangements under the Composition Plan. In particular, the Greylag Entities submits that these negotiations were conducted without the knowledge and participation of the other unsecured creditors, and the negotiated options available to these creditors were not offered to the rest of the unsecured creditors. Thus, unsecured creditors who could not participate in the private negotiations with Garuda Indonesia under the Alternative Lease Arrangements (including the Greylag Entities) had terms forced upon them.

114 The third relates to the Composition Plan's effect of compromising debts owed by third-party subsidiaries of Garuda Indonesia to Garuda Indonesia's unsecured creditors. In particular, the debts released include those owed by Garuda France to as many as 74 aircraft lessors, pursuant to the Third-Party Release Provisions, all of whom had claims against Garuda France prior to the approval of the Composition Plan. Thus, the Greylag Entities' rights to pursue the debts owed by Garuda France to them under the Aircraft Leases were discharged under the Composition Plan.

115 The Greylag Entities submit that these differences in the treatment of unsecured creditors rendered each of their rights so dissimilar from other unsecured creditors such that it was simply not sensible for all unsecured creditors to be put in the same class for the purposes of voting on the Composition Plan. Yet, all of Garuda Indonesia's unsecured creditors were placed in the same class. Accordingly, the manner in which the Composition Plan was put to a vote, namely without any proper classification and without an

equal opportunity for all unsecured creditors to negotiate deals with Garuda Indonesia openly, amounts to treatment of all creditors that was neither fair nor equitable and was thus contrary to Singapore public policy.

Treatment of creditors does not offend Singapore public policy

116 We do not accept the Greylag Entities' submissions. In our view, the arguments are legally and factually unsustainable and plainly do not show that the PKPU Proceeding was conducted and the voting of the Composition Plan was procured in a manner contrary to Singapore public policy.

117 The Greylag Entities' submission is legally unsustainable because it assumes that compliance with the requirements for proper creditor classification under Singapore law is a matter of Singapore public policy. *Pathfinder* and *Wah Yuen*, the authorities that the Greylag Entities rely on, considered the requirements for creditor classification under Singapore's restructuring regime as contained in s 210 of the Companies Act (Cap 50, 2008 Rev Ed) ("CA"). Nothing in these decisions can be taken as recognising or mandating that the division of creditors into further sub-classes is a fundamental tenet of the fair and equitable treatment of creditors recognised as part of Singapore public policy such that these requirements must be met *before a foreign restructuring or insolvency procedure may be recognised*. Indeed, Mr Rajaram conceded as much when he accepted that creditor classification was not recognised as a matter of public policy by any jurisdiction.

118 It appears to us that the true nature of the Greylag Entities' argument on the lack of classification of unsecured creditors is a criticism of the structure of the Indonesian insolvency regime, as opposed to an issue of fair and equitable treatment of creditors. It is common ground between the parties' Indonesian law

experts that there was no requirement under Indonesian law for creditors to be classified in the manner required under Singapore law, and this was the subject of criticism by the Greylag Entities Indonesian law expert.

119 According to the parties' Indonesian law experts, Indonesian insolvency law requires that creditors be classified under three categories – preferred, secured, and unsecured creditors – and only secured and unsecured creditors are eligible to vote on a composition plan. Crucially, the only requirement for the purposes of voting is that the debtor provide its creditors with the draft composition plan for a review of the offered repayment plan for all creditors. Once that is satisfied, all secured and unsecured creditors *will vote in the same class*. In other words, all unsecured creditors will be put in the same class for the purposes of voting, regardless of the different extent to which they are favoured or prejudiced under the composition plan relative to their positions in the event of the debtor's insolvency.

120 Once this is appreciated, it becomes clear that the Greylag Entities essentially take issue with the lack of a requirement for further classification under Indonesian insolvency law, similar to the manner required under Singapore law. Such an argument seeks, impermissibly in our view, to examine the merits of Indonesian insolvency law by superimposing Singapore insolvency law with a view to identifying any perceived "shortcomings" under Indonesian insolvency law. In other words, whether Indonesian insolvency law affords proper and fair treatment of creditors is sought to be measured solely by the yardstick of Singapore's domestic insolvency law. Such a parochial and narrow approach is contrary to the spirit of modified universalism as envisaged by the Model Law. Ultimately, the Greylag Entities must show that the requirement for such kinds of classification is a fundamental tenet of Singapore public policy, which they have failed to do.

121 Quite apart from this, we also think the Greylag Entities' submission is factually unsustainable. It is difficult to see how the mere fact that some unsecured creditors were offered repayment terms that differed from the rest is unfair or prejudicial so as to offend Singapore public policy. The parties' Indonesian law experts agree that there is no requirement under Indonesian law to offer the same repayment terms, as long as unsecured creditors within the same category are treated equally. Putting this aside, we agree with the Applicants that it is not sensible or practicable for a financially distressed or insolvent company to offer its creditors repayment on the same terms in light of the limited resources and funds. That is the reality of a restructuring process involving a financially distressed company and indeed the reality of most insolvency regimes. For a restructuring plan to be commercially viable and successful, some aspect of differentiated creditor treatment must be expected.

122 There is also nothing untoward or inherently objectionable with Garuda Indonesia deciding which of its unsecured creditors it wishes to continue its commercial relationship with; indeed, nothing under Singapore's domestic insolvency and restructuring jurisprudence would find this to be objectionable. The logical implication of the Greylag Entities' argument is that any Indonesian restructuring proceeding and composition plan offering different terms to creditors in the same class will never be recognised as a matter of Singapore public policy. That surely cannot be correct. Indeed, when pressed on this point, Mr Rajaram was unable to point to any other aspect of the PKPU Proceeding that was unfair. Indeed, he conceded that the debt of each creditor was restructured on broadly the same terms.

123 In this regard, it is pertinent that Greylag 1446 was made an offer by Garuda Indonesia to be part of the "Go-Forward Fleet" arrangement but chose not to take it up. Greylag 1446 then suggested an alternative lease arrangement,

which was eventually not accepted by Garuda Indonesia. In our view, had Garuda Indonesia accepted that alternative lease arrangement, it is unlikely that the Greylag Entities would have any basis for complaining or that Greylag 1446 would have pursued OA 5. This fortifies the point that the crux of the Greylag Entities' complaint is not so much one of unfair treatment. It was rather about Garuda Indonesia's commercial decision not to continue its relationship with the Greylag Entities on the Greylag Entities' terms.

124 We are also of the view that there is no merit in the point made by the Greylag Entities as regards the transparency and openness of the PKPU Proceeding. The terms of the Composition Plan were made known to all aircraft lessor creditors. This was not denied by the Greylag Entities. Indeed, the administrators of Garuda Indonesia had published and made available the relevant information in a data room which was set up for the creditors. And as the Greylag Entities' own Indonesian law expert accepts, it is possible for debtors to negotiate with creditors as to the terms of repayment and compromise, as long as the final results of the negotiations are distributed to all creditors for their review. There is therefore no issue regarding the transparency and openness of the PKPU Proceeding.

125 For these reasons, we disagree with the Greylag Entities that the PKPU Proceeding discloses unfair treatment of creditors contrary to Singapore public policy.

The alleged lack of financial disclosure

The Greylag Entities' submissions

126 The second point raised by the Greylag Entities relates to the allegedly inadequate disclosure of information during the PKPU Proceeding.

127 The Greylag Entities submit that the financial status of the subsidiaries (in terms of their assets and liabilities) was opaque to the creditors throughout the PKPU Proceeding. This significantly compromised the unsecured creditors' rights to vote on the Composition Plan. This point is relevant to the Requested Documents sought in SUM 34. The allegation is that consolidated financial statements for the entire corporate group were provided to the creditors as a result of which Garuda Indonesia did not provide adequate financial information regarding Garuda France's financial position. It was important for such information to be made available as Garuda France's debts were also being released under the Composition Plan, pursuant to the Third-Party Release Provisions. The Greylag Entities say that procuring such a release without adequate disclosure of information is another aspect of the PKPU Proceeding that was contrary to Singapore public policy.

128 In support of its position that the release of third-party debts in the absence of adequate financial disclosure is contrary to Singapore public policy, the Greylag Entities rely on the Court of Appeal's decision in *Pathfinder.*

129 Accordingly, the Greylag Entities submit that third-party releases in a restructuring plan would only be upheld if sufficient information was disclosed to ensure that the creditors could exercise their voting rights meaningfully.

No inadequate financial disclosure amounting to a breach of public policy

130 We do not accept the Greylag Entities' submission. We note at the outset that the factual basis for this allegation was not advanced by the Greylag Entities in the affidavit of one Mr Sean Hernon, the Greylag Entities' director. This argument was advanced for the first time in their written submissions, and Mr Rajaram conceded as much at the oral hearing.

131 In any event, we do not think the Greylag Entities' complaint on this ground is sustainable. While we accept that the adequacy of disclosure of information in restructuring or insolvency proceedings is an important aspect of due process, nothing in the evidence before us shows that the Greylag Entities were not afforded access to such information. To the contrary, the Applicants' evidence is that Garuda Indonesia had kept its creditors updated on discussions relating to the restructuring. On 12 November 2021, Garuda Indonesia had circulated to its creditors a restructuring term sheet detailing the key commercial terms of the plan. On 17 November 2021, following negotiations and comments by its creditors, Garuda Indonesia circulated a revised version of the restructuring term sheet. And as mentioned at [124] above, a virtual data room was set up and various revised versions of the restructuring term sheet were uploaded.

132 In relation to the Greylag Entities' allegation that Garuda France's financial information was not disclosed, the Greylag Entities do not allege that their request for such information was denied. *Indeed, no attempt was made on their part to request for such information from Garuda Indonesia's administrators*. Having not done so, it is impermissible for Greylag Entities to allege that they were denied such information.

133 To our minds, therefore, there simply is no basis for alleging that the Greylag Entities were denied due process as a result of an alleged lack of financial disclosure. We therefore do not accept the Greylag Entities' submission.

Additional observations relating to the Public Policy Objection

134 It is important to make two additional observations that speaks to the merits or the absence thereof of the allegations raised by the Greylag Entities under the Public Policy Objection.

135 First, the Greylag Entities have not explained why these complaints were not raised in the PKPU Proceeding or any application or appeals therefrom. In this regard, we note Mr Rajaram's concession that the alleged impropriety of third-party releases in the Composition Plan under Indonesian law should have been raised before the Indonesian courts. Having not done that, it is impermissible for the Greylag Entities to raise in these proceedings a point of substantive law under Indonesian law.

136 Second, it is important to note that despite the Greylag Entities claim that 74 out of 120 aircraft lessors had their rights *vis-à-vis* Garuda France extinguished under the Composition Plan, the plan was nevertheless supported by an overwhelming majority of creditors. While certainly not determinative, to our minds, it does suggest that contrary to the Greylag Entities' complaints, most of Garuda Indonesia's creditors did not think that the terms of the Composition Plan were unfair and prejudicial to them. Otherwise, they would likely have voted against the plan. This puts a critical dent in the Greylag Entities' argument that the absence of any requirement under Indonesian insolvency law to classify creditors appropriately or the alleged absence of transparency in Garuda Indonesia's private negotiations with selected creditors was unfair and prejudicial to the treatment of creditors and offends Singapore public policy.

137 For the foregoing reasons, we dismiss the Public Policy Objection raised by the Greylag Entities. Accordingly, we grant recognition of the PKPU Proceeding as a foreign main proceeding under Article 17 of the Third Schedule. We turn next to consider the Relief Issue.

The Relief Issue

138 The next pertinent issue is whether recognition and enforcement of the Composition Plan as a foreign order may be granted. This is the principal relief sought by Garuda Indonesia in OA 5. Specifically, two issues arise for our consideration:

(a) First, whether relief may be granted under the Third Schedule in the form of recognition and enforcement of foreign insolvency judgments or orders and if so, the provision under the Third Schedule that is applicable.

(b) Second, the appropriate terms of the order giving effect to the recognition and enforcement of the Composition Plan as a foreign order.

Recognition and enforcement of the Composition Plan

Grant of relief under Article 21(1) of the Third Schedule

139 It is not disputed by the parties that the appropriate provision empowering the Singapore court to grant additional relief in support of the recognition of a foreign proceeding is found under Article 21(1) of the Third Schedule. It is also not disputed that upon the recognition of the PKPU Proceeding as a "foreign main proceeding" within the meaning of Article 17(2) of the Third Schedule, the court is empowered to grant recognition and enforcement of the Composition Plan under Article 21(1).

140 In this connection, we note that whether Article 21(1) of the Third Schedule permits the recognition and enforcement of a foreign insolvency order (including a court order sanctioning a restructuring plan) is an issue that has received diverging treatment. In a cross-jurisdictional analysis undertaken by Aedit Abdullah J in *Re Tantleff, Alan* [2023] 3 SLR 250 ("*Tantleff*"), it was observed (at [71]–[75]) that whereas US bankruptcy law permits the recognition of foreign insolvency orders and judgments confirming foreign reorganisation plans under § 1521(a) of the US Bankruptcy Code (the equivalent of Article 21 of the Third Schedule), this was not the case in the UK under Article 21 of the CBIR 2006. In the landmark decision of the UK Supreme Court in *Rubin v Eurofinance SA* [2012] 3 WLR 1019 ("*Rubin (UKSC)*"), the court held (at [143]–[144]) that "the Model Law is not designed to provide for the reciprocal enforcement of judgments" and that Article 21 was "concerned with procedural matters" only.

141 Abdullah J expressed preference for the position under US bankruptcy law for the following reasons (see *Tantleff* at [76]–[78]):

> 76 *Rubin (UKSC)* has not been well received: see, for example, academic critique noting that 'the Supreme Court's reasoning in respect of Article 21 is unconvincing' (*A Commentary on the UNCITRAL* at p 248; *Principles and Practice* at p 165). It is also observed that in an attempt to get around the decision of the UK Supreme Court in *Rubin (UKSC)*, the UNCITRAL Working Group V drafted a proposed model law to allow for the recognition of foreign insolvency judgments, especially if the judgment comes from the jurisdiction of the debtor's COMI (Neil Hannan, *Cross-Border Insolvency: The Enactment and Interpretation of the UNCITRAL Model Law* (Springer, 2017) at p 244).
>
> 77 … The Singapore Ministry of Law has expressed its preference for the US approach in relation to Art 21(1)(*g*) over the UK approach. In the draft Companies (Amendment) Bill 2017 that the Ministry of Law sought public consultation on, the draft Art 21(1)(*g*) of the Model Law provided that the reliefs available included 'any additional relief that may be available to

> a Singapore insolvency officeholder *under the law of Singapore*' [emphasis added]. However, in the final version of the Model Law, the italicised phrase was deleted. This was intentionally done in order to align the Singapore position with that of the US, rather than the UK, as observed from the Ministry's Response to Feedback from Public Consultation on the Draft Companies (Amendment) Bill 2017 to Strengthen Singapore as an International Centre for Debt Restructuring …
>
> …
>
> The language of the Model Law as enacted in Singapore (the 'Singapore Model Law') is distinct from that of the UK Model Law, as it removes the qualifier that the relief granted must be available 'under the laws of [the State]'. From the above passage, it is clear that the Ministry of Law was concerned with the 'scope of relief that may be granted' under Art 21(1)(*g*) of the Singapore Model Law, and has expressly chosen to align the language of the provision with that under Chapter 15 of the US Bankruptcy Code.
>
> 78 In the circumstances, the US approach should be preferred and it is the US jurisprudence which should be persuasive in determining the scope of relief to be granted. The holding in *Rubin (UKSC)* is not endorsed in Singapore and I decline to follow the English authorities that depart from the US position. I accept the Applicant's arguments that the Singapore court is empowered under Art 21(1)(*g*) of the Model Law to grant recognition of the Chapter 11 Plan and Confirmation Order as foreign orders, following the proposition found in the US authorities. I do not consider that the difference in the language of the enacting provisions in the US and Singapore makes a substantial difference. While §1521(a) of the US Bankruptcy Code contains the additional phrase 'to effectuate the purpose of this chapter' (see above at [71]), the difference is not material. This is because the purpose of Chapter 15 is *in pari materia* with the objectives stated in the preamble to our Model Law. Additionally, while the version of Art 21(1)(*g*) enacted in Singapore contains the modifier 'available to a Singapore insolvency officeholder' after 'any additional relief' (see above at [77]), I do not read Art 21(1)(*g*) to be so restricted, in line with the Ministry of Law's comments that the scope of relief that may be granted should follow the US approach and the US provisions contain a similar modifier. This also follows from the fact that the phrase 'under the law of Singapore' was eventually removed, which signifies that an expansive view is to be taken.
>
> [emphasis in original]

142 We agree with Abdullah J that relief under the Third Schedule may extend to the recognition and enforcement of foreign insolvency orders. In so far as a contrary position is taken under English law, we also agree with Abdullah J that the position there is not persuasive. In this regard, we note in the Ministry of Law's Response to Feedback from Public Consultation on the Draft Companies (Amendment) Bill 2017 to Strengthen Singapore as an International Centre for Debt Restructuring, the preference expressed was to align the position under Singapore law with that under Chapter 15 of the US Bankruptcy Code (at paras 11.2.1–11.2.2). We reproduce the response as follows:

> **11.2 Art 21: Relief that May Be Granted Upon Recognition of a Foreign Proceeding**
>
> 11.2.1 In respect of Art 21(1)(g), we received a comment that despite similar wording in their respective provisions, the UK and US differ in their approaches on the scope of relief that may be granted. It was therefore suggested that Singapore should signal whether the US or UK approach should be adopted in respect of relief that may be granted under Art 21(1)(g).
>
> 11.2.2 After consideration of this issue, the suggestion has been noted and accepted. Thus, this provision has been amended to align the wording with the US provision in Chapter 15 of the US Bankruptcy Code.

We consider these views to be helpful as far as they assist us with understanding the intention behind the enactment of Article 21 of the Third Schedule.

143 There is therefore little doubt that the Composition Plan may be recognised and enforced in Singapore as a foreign order. The issue that arises, however, is the proper basis for recognition and enforcement, namely whether it ought to be granted under the *chapeau* of Article 21(1) (*ie*, under the limb of "any appropriate relief") or under Article 21(1)(*g*). For ease of reference, we reproduce Article 21 of the Third Schedule as follows:

> **Article 21. Relief that may be granted upon recognition of a foreign proceeding**
>
> 1. Upon recognition of a foreign proceeding, whether a foreign main proceeding or a foreign non-main proceeding, where necessary to protect the property of the debtor or the interests of the creditors, the Court may, at the request of the foreign representative, grant any appropriate relief, including —
>
> …
>
> (*g*) granting any additional relief that may be available to a Singapore insolvency officeholder, including any relief provided under section 96(4) of [the IRDA].

144 Article 21(1) of the Third Schedule provides that upon the recognition of a foreign proceeding, the court may grant "any appropriate relief" requested by the foreign representative. Moreover, the list of reliefs under Article 21 is non-exhaustive in nature and the court is not restricted unnecessarily in its ability to grant any type of relief that is required by the circumstances of the case: see *Tantleff* at [68]. This view is also supported by the *2013 Guide*, which states (at paras 189 and 191) that:

> 189 … [t]he types of relief listed in article 21, paragraph 1, are typical of the relief most frequently granted in insolvency proceedings; however, *the list is not exhaustive and the court is not restricted unnecessarily in its ability to grant any type of relief that is available under the law of the enacting State and needed in the circumstances of the case*.
>
> …
>
> 191 It is in the nature of discretionary relief that the court may tailor it to the case at hand. …
>
> [emphasis added]

145 Where relief in the form of the recognition and enforcement of foreign insolvency judgments and orders is sought, we are of the view that the relevant provision is "grant any appropriate relief" found in the *chapeau* of Article 21(1), and not Article 21(1)(*g*) of the Third Schedule. To the extent that Abdullah J in

Tantleff held that Article 21(1)(*g*) is the exclusive provision, therefore, we respectfully disagree. We say that the *chapeau* of Article 21(1) is the appropriate provision for the following reasons.

146 First, the recognition and enforcement of a foreign restructuring plan and a foreign court order is clearly not "relief that may be available to a Singapore insolvency officeholder" within the meaning of Article 21(1)(*g*) of the Third Schedule. Nothing in the IRDA confers on Singapore insolvency officeholders the power to apply for the recognition and enforcement of such plans and orders.

147 Second, and as Abdullah J observed in *Tantleff* (at [79]), "[i]nvoking [the *chapeau* of Article 21 of the Third Schedule] would circumvent the issue that the enforcement of a foreign rehabilitation plan is not ordinarily 'relief that may be available to a Singapore insolvency officeholder' under Art 21(1)(*g*) of the Model Law". Thus, it does appear that Abdullah J harboured some genuine doubt expressed over the propriety of invoking Article 21(1)(*g*) of the Third Schedule in this manner.

148 Third, the position under US bankruptcy law is that recognition and enforcement of foreign court orders may be granted under the *chapeau* of § 1521(a) of the US Bankruptcy Code, which reads:

> **§1521. Relief that may be granted upon recognition**
>
> (a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, *grant any appropriate relief*, …
>
> [emphasis added]

149 We agree with the approach adopted in the US jurisprudence, which supports the view that the better approach is to recognise a foreign order under the *chapeau* of Article 21 of the Third Schedule. Thus, in *In re Lupatech SA* 611 BR 496, 502 (Bankr SDNY 2020), the SDNY held that "appropriate relief" under § 1521 of the US Bankruptcy Code includes "enforcing a foreign order confirming a debtor's plan", but that the relief will only be granted if the interests of the creditors and other interested entities are sufficiently protected. Likewise, the SDNY held in *In re CGG SA* 579 BR 716, 720 (Bankr SDNY 2017) that "the recognition and enforcement of the Sanctioning Order [*ie*, the foreign court order confirming the restructuring plan] is '*appropriate relief*' under *section 1521(a)* of the Bankruptcy Code" [emphasis added]. The reference to the language of "appropriate relief" under the *chapeau* of § 1521 of the US Bankruptcy Code (rather than the language of "additional relief" under § 1521(a)(7), the equivalent of Article 21(1)(*g*) of the Third Schedule) was also made in the case of *In re Metrofinanciera* Lexis 6541 (Bankr SD Tex 2010) (at [11]), when deciding whether to recognise an order confirming a pre-packaged plan of reorganisation. In *In re Cell C Proprietary Ltd* 571 BR 542, 554 (Bankr SDNY 2017), the SDNY explained that the reason why the recognition and enforcement of foreign insolvency court orders and judgments fell within the wording of "appropriate relief" in the *chapeau* of § 1521(a) of the US Bankruptcy Code, was because this relief was not one enumerated in the non-exhaustive list set out in § 1521(a) of the US Bankruptcy Code (which would include § 1521(a)(7)).

150 We conclude this issue with one final observation. We note that Abdullah J in *Tantleff* had justified the view that recognition and enforcement of a foreign insolvency judgment or order may proceed under Article 21(1)(*g*) of the Third Schedule as this was the position taken by the SDNY in *In re Oi*

SA 587 BR 253 (Bankr SDNY 2018) ("*Oi SA*") (albeit under § 1521(a)(7) of the US Bankruptcy Code). We do not think this authority is persuasive for the view that recognition and enforcement of a foreign court order and plan is appropriately granted under § 1521(a)(7) as opposed to the *chapeau* of § 1521(a) of the US Bankruptcy Code. No reasons were given by the SDNY in *Oi SA* save that "it is the type of relief that was available under former Section 304 and routinely granted under U.S. law": see *Oi SA* at 266. In arriving at this proposition, the SDNY relied on its previous decision in *In re Rede Energia S.A.*, 515 BR 69 ("*Rede Energia*") (at 92–93), where the court enforced a Brazilian reorganisation plan under § 1521 of the US Bankruptcy Code. On closer inspection, however, it appears that the SDNY in *Rede Energia* had granted recognition and enforcement under the *chapeau* of § 1521(a) and not § 1521(a)(7). We note also that the position taken in *Oi SA* constitutes a minority of US authorities which permitted recognition and enforcement under § 1521(a)(7) as opposed to the *chapeau* of § 1521(a).

151 For these reasons, we think the correct approach is for recognition and enforcement of the Composition Plan to be granted under the *chapeau* in Article 21(1) of the Third Schedule as part of "any appropriate relief" requested by the foreign representative.

The appropriate terms for the order recognising the PKPU Proceeding and Composition Plan

152 We turn finally to consider the appropriate terms of the order granting recognition and enforcement of the Composition Plan.

153 At the outset, we note that although Article 21 of the Third Schedule appears to give the courts broad latitude to mould relief in aid of a foreign insolvency proceeding, that is not quite the case. Rather, we agree with

Abdullah J's observations in *Tantleff* that where relief is granted (such as in the form of recognition and enforcement of a foreign insolvency order), the court "is not merely acting as a rubber stamp": see *Tantleff* at [81]. To this end, Article 22(1) of the Third Schedule states as follows:

> In granting or denying relief under Article 19 or 21, or in modifying or terminating relief under paragraph 3 of this Article or Article 20(6), the Court must be satisfied that the interests of the creditors (including any secured creditors or parties to hire-purchase agreements (as defined in section 88(1) of this Act)) and other interested persons, including if appropriate the debtor, are adequately protected.

154 Although the parties in the present case do not raise any arguments on creditor protection (or the lack thereof) in relation to the reliefs sought by Garuda Indonesia, we think it pertinent to emphasise that the court must, in determining the appropriate relief, bear in mind the need to ensure that the interests of creditors and other interested persons are protected. In this connection, any relief sought by a foreign representative must not impinge excessively on any one entity's interests. Indeed, relief will only be granted if the court is satisfied that the interests of the relevant persons are protected. In the words of the US Court of Appeals for the Fourth Circuit ("the Fourth Circuit") in *Jaffe v. Samsung Electronics Co., Ltd.* 737 F.3d 14 (4th Cir 2013) ("*Jaffe*"), an application for recognition and relief sought under the Model Law "does not require a court, in considering a foreign representative's request for discretionary relief under [Article 21 of the Third Schedule], to blind itself" to the detriment that the relief sought may potentially impact others: see *Jaffe* at 29.

155 We agree, and we note that a balancing inquiry was also alluded to in the *2013 Guide* (at para 196):

> The idea underlying article 22 is that there should be a balance between relief that may be granted to the foreign representative and the interests of the persons that may be affected by such relief. This balance is essential to achieve the objectives of cross-border insolvency legislation.

156 In the present case, we are satisfied that the interests of Garuda Indonesia, its creditors and other stakeholders are sufficiently protected under the Composition Plan. An order enforcing the Composition Plan will permit the Applicants to take the actions necessary to implement the terms of the plan in Singapore. Absent the grant of recognition and enforcement, the terms of the Composition Plan may not be fully implemented as contemplated by the parties who have voted in favour of and have given their support to the plan. This can only work to the detriment of all creditors and stakeholders involved in Garuda Indonesia's restructuring as a collective whole.

157 We turn next to consider the reliefs sought by the Applicants in the present case (see [2] above). In our view, there is nothing to suggest that the reliefs sought by the Applicants are inappropriate or not permitted as a matter of law. In granting the reliefs sought by the Applicants, however, we think it necessary to make further qualifications to the terms of the orders for the relief. In this connection, we note that Article 22(2) of the Third Schedule empowers the courts to grant the relief sought under Article 21 subject to conditions that the court considers appropriate.

158 In OA 5, we note there are two ongoing arbitration proceedings involving the Greylag Entities as claimants, and both Garuda Indonesia and Garuda France as respondents. Given that the PKPU Proceeding is recognised in Singapore as a foreign main proceeding, Article 20(1)(*a*) of the Third Schedule operates to stay those arbitration proceedings as regards Garuda Indonesia. As Garuda France is not a party to the PKPU Proceeding, the

automatic stay under Article 20(1)(*a*) does not apply to the arbitration proceedings against Garuda France and we do not understand the parties as contending otherwise.

159 The issue that arises for our consideration, however, is the effect that recognition and enforcement of the Composition Plan would have on the arbitration proceedings between Garuda France and the Greylag Entities, in particular whether Garuda France may rely on the Composition Plan and the purported release of its debt obligations therein as a defence against the Greylag Entities' claims which appear to be premised on the same debt obligations. In this regard, Mr Chua submits that the effect the Composition Plan has on the claims raised in the arbitration is a matter for the arbitral tribunal to determine, and it is not necessary for us to make an express order regarding the legal effect of recognising the Composition Plan on the claims in other proceedings (which we term the "carve-out"). While we generally agree with that submission, our difficulty with not including an appropriate carve-out in the recognition and enforcement order relates to the uncertainty in the extent to which recognition and enforcement of the Composition Plan in Singapore may have over the conduct of the arbitration (which we note is seated in Singapore) and the determination of the issues therein. This is especially since the Composition Plan appears to have the effect of releasing Garuda France's debt liability owed to the Greylag Entities under the Aircraft Leases.

160 In this connection, Mr Rajaram accepts that the Composition Plan can only be enforced by the parties who are bound by the plan, and it is common ground between the parties that Garuda France is not one such party. This position is also accepted by the parties' Indonesian law experts. Be that as it may, in so far as the release of the debts of Garuda France under the Composition Plan may have an impact on the issues arising from the claims

against Garuda France in the arbitration proceedings, that is a matter more appropriately dealt with in those proceedings.

161 We therefore think it appropriate to make the following carve-out in respect of the recognition and enforcement of the Composition Plan:

> The Homologation Order by the Jakarta Commercial Court and the Composition Plan will be recognised and enforced in Singapore. Such recognition and enforcement will be without prejudice to any ongoing arbitration or litigation proceedings involving the Greylag Entities and Garuda France or any other subsidiaries of Garuda Indonesia within the jurisdiction of Singapore or where Singapore is the seat of the arbitration, as the case may be.

162 Finally, we add that the parties' Indonesian law experts agree that Indonesian law recognises a creditor's right to pursue a claim for debt rejected at the proof-of-debt stage in a PKPU proceeding in a separate forum. As this forms one of the claims pursued by the Greylag Entities against Garuda France in the arbitration, we think it appropriate to make the following carve-out regarding the scope of the stay of proceedings imposed pursuant to Article 20 of the Third Schedule:

> The parties agree that the stay of proceedings under Article 20 of the Third Schedule will not extend to include claims pursued by the Greylag Entities against Garuda Indonesia in arbitration in relation to the portion of the Greylag Entities' debt that was not admitted by Garuda Indonesia's administrators during the PKPU Proceedings.

Conclusion

163 For the reasons above, we allow OA 5 and recognise the PKPU Proceeding as a foreign main proceeding, and grant relief for: (a) all legal proceedings between Garuda Indonesia and the Greylag Entities to be stayed pursuant to the mandatory stay under Article 20(1) of the Third Schedule; and (b) the Composition Plan to be recognised and enforced in Singapore under the

chapeau to Article 21(1) (*ie*, under the limb of "any appropriate relief") of the Third Schedule as a foreign order subject to the terms which we have set out above.

164 We shall hear the parties on costs.

Kannan Ramesh
Judge of the Appellate Division

Anselmo Reyes
International Judge

Christopher Scott Sontchi
International Judge

Emmanuel Duncan Chua, Lee Yu Lun, Darrell, Irvin Ho Jia Xian and Mock Yuan Bing (Wong & Leow LLC) for the first and second applicants;
Muralli Raja Rajaram, Valerie Ang, Jerrie Tan, Eva Teh Jing Hui and Felicia Tee (K&L Gates Straits Law LLC) for the first and second non-parties.