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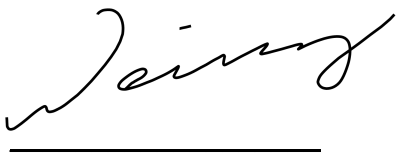
DECLARATION OF HONOUR

I declare that the paper, titled “The evolution of the approach of the common law courts to cross-border co-operation in England and Singapore: Does the principle of universalism still apply in the common law?” is my own work, that it has been prepared independently and that all references to, or quotations from, the work of others are fully and correctly cited.



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Short Paper Topic

Analyse the evolution of the approach of the common law courts to cross-border co-operation through existing case law, including the *Cambridge Gas* and *Singularis* cases. Comparing England and one other jurisdiction in the common law family, discuss the extent to which the principle of universalism still applies in the common law.

Contents

I. TITLE

The evolution of the approach of the common law courts to cross-border co-operation in England and Singapore: Does the principle of universalism still apply in the common law?

II. INTRODUCTION

1. Corporate international insolvency law is usually thought of as two competing schools of thought: Territorialism and Universalism[1].

2. Territorialism is a legal principle of international insolvency law that deals with the assets of an insolvent entity in accordance with the insolvency laws of the jurisdiction where the assets are located. The essence of territorialism is that assets located in a jurisdiction are used to satisfy the debts of creditors in that jurisdiction with little regard for the claim by parties elsewhere[2]. The territorialism principle necessitates many different proceedings which lead to inefficiencies in the administration of the insolvency of the debtor's affairs worldwide.

3. In contrast, universalism is a legal principle deals with the assets of an insolvent entity in a single insolvency proceeding and governed by one insolvency law which receives worldwide recognition. The aim of universalism is to provide a single jurisdiction applying a single legal regime to all aspects of a debtor's affairs on a worldwide basis[3], with assistance of the courts in other jurisdictions. Assets located in "secondary jurisdictions" are either transferred to the main jurisdiction or simply subject to the same bankruptcy regime.

4. In England, the tension between both principles has resulted in numerous cases reaching the UK Supreme Court. The opinion of Lord Hoffmann in *Cambridge Gas Transport Corpn v Official Committee of Unsecured Creditors of Navigator Holdings plc*]2007] 1 AC 508 ("***Cambridge Gas***") and in *re HIH Casualty and*

[1] See Eric Sokol, *The Fate of Universalism in Global Insolvency: Neoconservatism and New Horizons*, 44 Hastings International and Comparative Law Review, 39 (2021).
[2] See Michael Crystal, *The Golden Thread: Universalism and assistance in International insolvency*, Jersey & Guernsey Law Review, paragraph 7 (Feb 2011).
[3] Ibid.

General Insurance Ltd [2008] 1 WLR 852 ("***HIH***") are major decisions of the English courts that marked the height of the principle of universalism in respect of the cross-border co-operation by common law courts. The trend of expansive common law assistance to uphold the principle of universalism of insolvency proceedings advocated in *Cambridge Gas* and *HIH* was most notably reversed in the decision in *Rubin v Eurofinance SA* [2012] 3 WLR 1019 ("***Rubin***").

5. Being a former British colony, Singapore inherited the English common law and equity and English statutes. The Singapore courts have recognised that the principle of universalism was historically entrenched as part of the common law and existing in Singapore. After Singapore gained independence as a sovereign nation on 9 August 1965, Singapore created its own autochthonous legal system in 1993 with the abolition of all appeals to the Privy Council in England and the establishment of a permanent Court of Appeal of Singapore as Singapore's highest court. Whilst the common law continued to be in force in Singapore, the Singapore legislature introduced the Application of the English Law Act in November 1993 which provided that the common law continued to be in force in Singapore as long as it is applicable to the circumstances of Singapore and subject to such modifications as those circumstances may require. With this development, the court decisions from England and other commonwealth jurisdictions are no longer legally binding in Singapore.

6. This short paper will analyse and compare the approaches adopted by the English courts and the Singapore courts in respect of the common law jurisdiction to cooperate and assist foreign insolvency proceedings.

III. ENGLAND

7. The significant decision of the English courts in respect of the common law cooperation of the cross-border insolvency proceedings was first expressed in the opinion of Lord Hoffmann in *Cambridge Gas*.

A. Cambridge Gas

8. The broad facts of *Cambridge Gas*[4] are these: In 1997 a failed shipping business underwent a Chapter 11 restructuring. The shipping business was held through offshore companies incorporated in various jurisdiction. Under the organisational structure of the shipping business, Cambridge Gas owned, directly or indirectly, at least 70% of the shares of a holding company incorporated in the Isle of Mann, Navigator Holdings plc ("**Navigator**"), which in turn held shares in separate subsidiaries of Navigator that owned various vessels. Navigator made the application for a plan of reorganisation under Chapter 11 which was rejected by creditors who proposed a plan under which the assets of Navigator would be vested in the creditors. The creditors' plan was approved by the Court. The committee of creditors applied for an order to vest the shares in Navigator in their representatives. Cambridge Gas was a Cayman Island company which had not submitted to the jurisdiction of the US bankruptcy court.

9. The issue on appeal in *Cambridge Gas* was whether the US court order approving the creditors' plan was to be classified as a judgment in rem or in personam with the effect that if it is a judgment in rem purporting to change the title to property outside the US court's jurisdiction, the US court order could not be recognised according to general principles of private international law that judgment in rem can only affect property within the court's territorial jurisdiction. If the US court order is a judgment in personam, the US court order could not be recognised because Cambridge Gas, which owed 70% of the shares of Navigator, did not submit to the jurisdiction of the US court.

10. The English Privy Council in Cambridge Gas held that the creditors' plan approved by the US Bankruptcy court could be carried into effect in the Isle of Man. The court considered that bankruptcy proceedings do not fall within either category and upheld the principle of universalism of bankruptcy proceedings where a single bankruptcy in which all creditors are entitled and required to prove. The English court applied the common law principle of active assistance whereby the domestic court must be able to provide assistance by doing whatever it could have done in the case of a domestic insolvency, the purpose of which is to enable the foreign

[4] *Cambridge Gas Transport Corpn v Official Committee of Unsecured Creditors of Navigator Holdings plc*]2007] 1 AC 508.

office holder or the creditors to avoid having to start parallel proceedings and to give them the remedies to which they would have been entitled if the equivalent proceedings had taken place in the domestic forum.

11. The opinion of Lord Hoffman set out the English court's position on the principle of universalism applicable to cross-border insolvency proceedings. Lord Hoffman held at [16] that:

"*The English common law has traditionally taken the view that fairness between creditors requires that, ideally, bankruptcy proceedings should have universal application. There should be a single bankruptcy in which all creditors are entitled and required to prove. No one should have an advantage because he happens to live in a jurisdiction where more of the assets or fewer of the creditors are situated.*"

B. HIH

12. The principle of universalism applicable to cross-border insolvency proceedings was also emphasised in *HIH*[5] which set out the extent of the English court's willingness to assist foreign insolvency proceedings.

13. The broad facts of *HIH* are these: Four Australian insurance companies were being wound up in Australia and had provisional liquidators appointed in England. The question before the English final appellate court, the House of Lords, was whether the English court should direct remission of assets collected in England to Australia, notwithstanding there were differences between the English and Australian statutory regimes for distribution which meant that some creditors would benefit from remission whilst some creditors would be worse off. The House of Lords overturned the decisions of the judge at first instance and of the Court of Appeal and unanimously directed that remission should take place. The decisions of two of their Lordships (Lords Scott and Neuberger) were based exclusively on the statutory power to assist foreign insolvency proceedings contained in section 426 of the Insolvency Act 1986, but Lord Hoffman (with whom Lord Walker agreed) also considered that such a power existed at common law.

[5] *re HIH Casualty and General Insurance Ltd* [2008] 1 WLR 852.

14. Lord Hoffman held at [30] that:

"*The primary rule of private international law which seems to me applicable to this case is the principle of (modified) universalism, which has been the golden thread running through English cross-border insolvency law since the 18th century. That principle requires that English courts should, so far as is consistent with justice and UK public policy, co-operate with the courts in the country of the principal liquidation to ensure that the company's assets are distributed to its creditors under a single system of distribution*."

C. Re Phoenix

15. The willingness of the English courts to grant active assistance to foreign insolvency proceedings extends to the grant of domestic (English) litigation powers to assist an overseas office holder even though no domestic (English) proceedings are envisaged or possible. This is demonstrated in *Re Phoenix Kapitaldienst GmbH, Schimitt v Deichmann & Ors* [2012] EWHC 62 (Ch) ("***Re Phoenix***").

16. The broad facts of *Re Phoenix*[6] are these: A German company carrying on business in Germany and elsewhere perpetuated a worldwide fraud in the form of a "Ponzi" scheme. The business was loss making from the start and all or most of the moneys collected from investors was used to cover existing overhead and to pay fictitious profits to other investors rather than being invested in the futures market. German administrator was appointed over the German company and commenced legal proceedings in over 20 other jurisdictions in which former investors were being sued to recover the moneys. The German administrator sought an order from the English court for recognition of the German administrator and authority to exercise powers afforded to licensed insolvency practitioners under the Insolvency Act 1986 to set aside transactions entered into at undervalue for the purposes of defrauding creditors. It was common ground that the German administrator's only recourse to seek the reliefs is to common law principles as the reliefs under the statutory provisions were not available to the German administrator given that Germany is not a designated country under the Insolvency Act 1986.

[6] *Re Phoenix Kapitaldienst GmbH, Schimitt v Deichmann & Ors* [2012] EWHC 62 (Ch).

17. The issue before the English High Court in *Re Phoenix* was whether English courts had inherent common law jurisdiction to permit the statutory power under section 423 of the Insolvency Act 1986 to be applied to a foreign administrator not falling within the express scope of the Insolvency Act 1986.

18. Prior to *Re Phoenix*, the English case law had addressed the different question whether English court has jurisdiction to implement orders made in foreign countries and had not authoritatively addressed the issue in *Re Phoenix*. After canvassing the relevant English case-law, including *Cambridge Gas* and *HIH*, the Court derived the following propositions:

"[62.] … *(i) there is power to use the common law to recognise and assist an administrator appointed overseas; (ii) assistance includes doing whatever the English court could have done in the case of a domestic insolvency, (iii) bankruptcy proceedings are collective proceedings for the enforcement (not establishment) of rights for the benefit of all creditors, even when those proceedings (include proceedings to set aside antecedents, (iv) proceedings to set aside antecedent transactions are central to the purpose of insolvency*/"

19. Notwithstanding that the statutory relief sought from the English court was not available to the foreign office holder, the English court adopted the broad-brush approach of *Cambridge Gas* and *HIH* to cooperate with the country of the principal liquidation to ensure that all of the company's assets are distributed under a single system of distribution.

D. Rubin

20. The often-cited English Privy Council case in *Rubin v Eurofinance SA* [2013] 1 AC 236 ("***Rubin***") reversed the English courts' approach developed in line of cases which built on the opinion of Lord Hoffman in *Cambridge Gas* and *HIH* to support the expansive approach of the English courts to uphold the principle of universalism of insolvency proceedings and to provide active assistance to cooperate with foreign insolvency proceedings.

21. The Privy Counsel of England explicitly disavowed *Cambridge Gas* and held that the common law would only enforce a foreign judgment in personam if the

judgment debtors had been present or had submitted to the jurisdiction of the foreign jurisdiction[7] and that as a matter of policy, the court would not adopt a more liberal rule in respect of enforcement judgments in the interests of the universality of bankruptcy[8].

22. Rubin were appeals against two decisions involving two companies. The broad facts of these two appeals in *Rubin* are these:

(a) The appeal in relation to *Rubin v Eurofinance SA* [2011] Ch 133 involved a company incorporated in the British Virgin Islands, Eurofinance SA, which established a business trust to carry out a fraudulent sales promotion scheme in the United States of America and Canada. The business trust was governed under English law and had trustees resident in England. Criminal proceedings were commenced under consumer protection legislation which resulted in a settlement involving payment by the trustees. In anticipation of further legal proceedings, Eurofinance SA applied to appoint receivers of the business trust for the purposes of presenting an application to the US Bankruptcy Court for relief under Chapter 11. Proceedings were commenced in the US Bankruptcy Court, and default judgment was obtained, against parties who were involved in the fraudulent sales promotion scheme and had received funds received by the business trust from participating merchants. The appointed representatives of the Chapter 11 proceedings applied to the English Court to seek recognition of the Chapter 11 proceedings and of the appointed representatives and the enforcement of the default judgment as a judgment of the English court. The English court at first instance granted recognition of the Chapter 11 proceedings but refused enforcement of the US judgments. The England Court of Appeal reversed the denial of enforcement, relying upon Lord Hoffmann's opinions in *Cambridge Gas*.

(b) The appeal in relation to *New Cap Reinsurance Corpn Ltd* [2012] Ch 538 involved a reinsurance company incorporated in Australia, New Cap Reinsurance. New Cap Reinsurance reinsured Lloyd's Syndicate in relation to losses occurring on risks under reinsurance contracts which were subject

[7] *Rubin v Eurofinance SA* [2012] 3 WLR 1019 at [132].
[8] *Ibid* at [115].

to English law and contained English jurisdiction clauses. Payments were made by New Cap Reinsurance to Lloyd's Syndicate from a bank account held in Australia to a bank account in London. New Cap Reinsurance was subsequently wound up and a liquidator was appointed in Australia. The liquidator commenced legal proceedings, and obtained default judgment, against Lloyd's Syndicate in the Australia courts to set aside and recover payments made by New Cap Reinsurance to the bank account in London as unfair preferences under the Australian Act. Lloyd's Syndicate did not submit to the Australian court's jurisdiction and did not enter an appearance. The liquidator of New Cap Reinsurance applied and obtained a letter of request issued by the Australian court to the High Court of England to assist the Australia court by enforcing the Australian default judgment.

23. The principal issues on these appeals were whether a foreign insolvency judgment could be enforced in England at common law against a defendant not subject to the jurisdiction of the foreign court. The majority decision of the English Supreme Court in relation to the appeal in *Rubin* held that under common law there was to be no special treatment for insolvency judgments and the normal Dicey rule on enforcement was applicable (i.e. the English courts would enforce a foreign judgment if the judgment debtor had submitted to jurisdiction of the foreign court) and that it was up to legislature to make provision for the universal operation of insolvency law.

24. On the facts in relation to Eurofinance SA, the Supreme Court of England found that the legal proceedings commenced in the US Bankruptcy Court against the defendants had been in personam and they had not submitted to the jurisdiction of the US Bankruptcy Court, the default judgments obtain could not be enforced by the English courts. On the facts in relation to New Cap Reinsurance, the Supreme Court of England found that Lloyd's Syndicated had submitted to the jurisdiction of the Australian court and the default judgments was enforceable in England.

25. The majority decision in *Rubin* criticised the expansive approach in respect to cross-border insolvency proceedings as advocated in *Cambridge Gas* and held at [128] and [129] of *Rubin* that:

"*In my judgment, the dicta in Cambridge Gas and HIH do not justify the result which the Court of Appeal reached. This would not be an incremental development of*

existing principles but a radical departure from substantially settled law. There is a reason for the limited scope of the Dicey rule and that is that there is no expectation of reciprocity on the part of foreign countries. Typically today the introduction of new rules for enforcement of judgments depends on a degree of reciprocity. The EC Insolvency Regulation and the Model Law were the product of lengthy negotiation and consultation."

"*A change in the settled law of the recognition and enforcement of judgments, and in particular the formulation of a rule for the identification of those courts which are to be regarded as courts of competent jurisdiction (such as the country where the insolvent entity has its centre of main interests and the country with which the judgment debtor has a sufficient or substantial connection), has all the hallmarks of legislation, and is a matter for the legislature and not for judicial intervention.*"

26. Subsequent to *Rubin*, the decision by the Privy Council of the England in *Singularis Holdings Ltd v PricewaterhouseCoopers* [2015] 2 WLR 971 ("***Singularis***") further clarified that whilst the common law recognised the principle of universalism in relation to cross-border insolvency proceedings, i.e. the courts has common law powers to ensure, as far as it properly can, that the worldwide assets of a company and the worldwide claimants to those assets are treated on a common basis,[9] the expansive development of the principle of active assistance as advocated in the lines of cases based on *Cambridge Gas* is unjustified and has limits.

E. Singularis

27. In *Singularis*[10], the English courts imposed further limits to the principle of universalism in relation to cross-border insolvency proceedings and solidified the position that the English courts could not grant relief which was not available to domestic English debtors. The English court in *Rubin* reiterated the reversal of the expansive approach of the English courts to provide active assistance to cooperate with foreign insolvency proceedings.

28. The broad facts in *Singularis* are these: Singularis Holdings Ltd, a company incorporated in the Caymans Islands, was subject to a liquidation order made by

[9] *Stichting Sheel Pensioenfonds v Krys and another* [2015] AC 616 at [38].
[10] *Singularis Holdings Ltd v PricewaterhouseCoopers* [2015] 2 WLR 971.

the Grand court of the Cayman Islands. The Cayman court had made orders under section 103 of the Cayman Islands Companies Law against the former auditors to provide the liquidators documents belonging to the company. The liquidators also sought to obtain information that belonged to the former auditors themselves by invoking corresponding powers under section 195 of the Companies Act of Bermuda, which are in wider terms compared to section 103 of the Cayman Islands Companies Law. The powers of the Bermuda court under section 195 of the Companies Act of Bermuda are exercisable only in respect of a company which that court has ordered to be wound up, but no winding up order was sought or made in Bermuda. Instead, the Bermuda court made an order to recognize the status of the liquidators by virtue of their appointment by the Cayman court and exercised a common law power by analogy with the statutory powers contained in the Companies Act to order the former auditors to produce the same documents which they could have been ordered to produce under the Bermuda Companies Act. The Court of Appeal of Bermuda set aside the orders granted in first instance on the ground that it was not an appropriate exercise of discretion because the court should not make an order in support of a Cayman liquidation which could not have been made by the Cayman court itself.

29. The issues that arose on appeal to the Privy Council in *Singularis* was whether the Bermuda court has a common law power to assist a foreign liquidation by ordering the production of information in circumstances where the Bermuda court has no power to winding up an overseas company (i.e. Singularis Holdings) and the Bermuda statutory power to order the production of information is limited to cases where a company has been wound up in Bermuda. The second issue is whether, if such a power exists, it is exercisable in circumstances where an equivalent order could not have been made by the court in which the foreign liquidation is proceeding.

30. On the first issue of common law power to assist a foreign liquidation, the Privy Council in *Singularis* noted that *Cambridge Gas* marked the furthest that the common law courts have gone in developing the common law powers of the court to assist a foreign liquidation. It noted that Cambridge Gas stood for three propositions[11]:

[11] *Ibid* at [15].

(a) The first proposition is the principle of modified universalism, namely that the court has a common law power to assist foreign winding up proceedings so far as it properly can.

(b) The second proposition is the principle that the principle of modified universalism includes doing whatever it could properly have done in a domestic insolvency, subject to its own law and public policy.

(c) The third proposition is the principle that this power is itself the source of its jurisdiction over those affected, and that the absence of jurisdiction in rem or in personam according to ordinary common law principles is irrelevant.

31. The Privy Council in *Singularis* held that the second and third propositions for which *Cambridge Gas* was authority could not be supported but held that the principle of modified universalism is part of the common[12]. Although the Privy Council upheld the principle of modified universalism in relation to cross-border insolvency proceedings, the Board was of the opinion that the principle of modified universalism is subject to local law and local public policy and that the court can only ever act within the limits of its own statutory and common law powers. In the absence of a relevant statutory power, they must depend on the common law, including any proper development of the common law[13].

32. In considering the development of the common law powers to give effect to the principle of universalism in relation to international insolvency, the Privy Council in *Singularis* demonstrated a careful and principled approach to the development of the common law power to cooperate with foreign insolvency proceedings.

33. The Privy Council in *Singularis* noted the "*capacity of the common law to develop a power on the court to compel the production of information where this is necessary to give effect to a recognised legal principle*"[14], and the willingness of the English courts "*to develop appropriate remedies to require the provision of information when a sufficiently compelling legal policy calls for it*"[15].

[12] *Ibid* at [18] and [19].
[13] *Ibid* at [19].
[14] *Ibid* at [20].
[15] *Ibid* at [20].

34. After careful consideration, the Privy Council was of the opinion that "an analogous power arises" in the case where relief is sought by officers of a foreign court"[16] to give effect to a recognised principle of the common law of modified universalism which is founded on the public interest in the ability of foreign courts exercising insolvency jurisdiction in the place of the company's incorporation to conduct an orderly winding up of its affairs on a worldwide basis, notwithstanding the territorial limits of their jurisdiction. The basis of that public interest is not only comity, but a recognition that in a world of global businesses it is in the interest of every country that companies with transnational assets and operations should be capable of being wound up in an orderly fashion under the law of the place of their incorporation and on a basis that will be recognised and effective internationally[17].

35. *Singularis* demonstrated the English court's careful and considered approach in the development of the principle of universalism for cross-border insolvency. The Privy Council in *Singularis* was of the opinion that whilst there is a power at common law to assist a foreign court of insolvency jurisdiction by ordering the production of information which is necessary for the administration of a foreign winding up, the English court held that there are limits of this power[18]:

(a) First, it is available only to assist the officers of a foreign court of insolvency jurisdiction or equivalent public officers and would not be available to assist a voluntary winding up, which is essentially a private arrangement and although subject to the directions of the court is not conducted by or on behalf of an officer of the court.

(b) Second, it is a power of assistance and exists for the purpose of enabling those courts to surmount the problems posed for a worldwide winding up of the company's affairs by the territorial limits of each court's powers. It is not therefore available to enable them to do something which they could not do even under the law by which they were appointed.

(c) Third, it is available only when it is necessary for the performance of the office-holder's functions.

[16] *Ibid* at [23].
[17] *Ibid* at [23].
[18] *Ibid* at [25].

(d) Fourth, the power is subject to the limitation that such an order must be consistent with the substantive law and public policy of the assisting court.

(e) Fifth, its exercise is conditional on the applicant being prepared to pay the third party's reasonable costs of compliance.

36. Lord Collins of Mapesbury held that cases where the English courts have relied on *Cambridge Gas* to apply legislation which the legislature had not itself seen fit to apply are wrong because it involved an impermissible application of legislation by analogy[19]. Lord Collins of Mapesbury was of the view that "*to apply insolvency legislation by analogy "as if" it applied, even though it does not actually apply, would go so far beyond the traditional judicial development of common law as to be a plain usurpation of the legislative function*[20]" and that that whilst "the common law develops, sometimes radically, to meet changing circumstances", "there are limits to the power to make law"[21].

37. The Privy Council in *Singularis* also held that whilst there a domestic court has common law power to grant ancillary relief in support of the proceedings of a foreign court, "*it is not a proper use of the power of assistance to make good a limitation on the powers of a foreign court of insolvency jurisdiction under its own law*[22]". The Privy Council refused to order the former auditors to produce the documents when the Cayman court could not have been made such an order under the laws of Cayman Islands.

38. It is important to note that whilst *Singularis* advocated a careful and considered development of the common law power to cooperate with foreign insolvency proceedings to achieve the principle of universalism of cross-border insolvency, the judges in *Singularis* had differing opinion on the extent of development of the powers to assist foreign insolvency proceedings.

39. Lord Sumption JSC, who delivered the majority judgment in *Singularis*, held, inter alia, that the common law power to grant assistance to a foreign court should be exercised to assist foreign liquidators who have been properly recognised as officer

[19] *Ibid* at [94].
[20] *Ibid* at [64].
[21] *Ibid* at [65].
[22] *Ibid* at [29].

of the court, and that the recognition of the foreign liquidator would mean very little if it entitled him to take possession of the company's assets but left him with no effective means of identifying or locating them[23].

40. In a dissenting opinion, Lord MNXW JSC was of the view that "*to exercise the common law power to "haul" any one before the court … to be interrogated and to produce documentation on pain of being in contempt, simply because it would be useful for the foreign liquidator to be able to do so and might enable him to locate some assets (or better understand the company's affairs)*[24]" would be "*a step leap between enforcing rights to identifiable assets and obliging third parties to assist with documentation and information in order to discover a company's assets (or, still more widely, in order to enable insolvency practitioners to understand a company's affairs)*[25]". Lord Mance JSC was of the opinion that the existence of foreign insolvency proceedings, conducted for the benefit of creditors, does not appear to provide any justification for the exercise of the court's power to compel the production of information from private individuals,[26] which the court have been careful to confine such remedies to situations where there is a recognisable legal claim to protect based on a title or right to property or on some wrongdoing supported by appropriate evidence[27].

41. Lord Neuberger of Abbotsbury PSC agreed with the majority decision that the appeal be dismissed but, on obiter dicta, agreed with Lord Mance JSC that there is no common law power to order the production of information simply because it would be useful for the foreign liquidator to be able to do so and might enable him to locate some assets or better understand the company's affairs[28], and was of the opinion that this area of law should be left to the legislature[29].

42. Subsequent to the reversal of the expansive approach of active assistance to uphold the principle of universalism of insolvency proceedings in *Cambridge Gas* and *HIH*, much difficulty lies with the extent that the courts are prepared to develop the common law power to assist foreign insolvency proceedings or what amounts

[23] *Ibid* at [23].
[24] *Ibid* at [135].
[25] *Ibid* at [135].
[26] *Ibid* at [136].
[27] *Ibid* at [137].
[28] *Ibid* at [156].
[29] *Ibid* at [137].

to a principled development of the common law. This difficulty is demonstrated in *Kireeva v Bedzhamov* [2022] 3 WLR 1252 ("***Kireeva***") where the judges took differing views as to what constituted principled development of the common law on the same facts.

F. *Kireeva*

43. The broad facts in *Kireeva*[30] are these: Two banks obtained judgments against a party and sought to have the judgment debtor declared a bankrupt in Russia. A bankruptcy order was made against the judgment debtor. One of the banks issued proceedings in England and was granted a worldwide freezing order against the judgment debtor restraining him from disposing of assets up to the value of £1.34 billion. An application was also made in England for the recognition of the Russian bankruptcy order and appointment of a bankruptcy trustee, and an order for the property in England that belonged to the judgment debtor to be entrusted to the appointed bankruptcy trustee. The English court at first instance granted the order for recognition of the Russian bankruptcy order and appointment of the bankruptcy trustee. However, the English court at first instance did not grant the order to entrust the property in England to the appointed bankruptcy trustee on the basis of the "immovables rule" (i.e. a rule that as a matter of English law, a foreign court has no jurisdiction to make orders in respect of land in England and rights relating to such land are governed exclusively by English law).

44. The issue before the English appellate court in *Kireeva* was whether a foreign office holder who is recognised at common law by the recognising court is in essentially the same position as a foreign office holder who can seek similar reliefs in respect of immovable properties located in England that are available under English statutory provisions.

45. Judge Neway LJ was of the opinion that it would not be proper for the English court to exercise its common law power to circumvent the immovable rule to grant assistance to the foreign appointed representative that is recognised by the English courts to deal with the land in England[31]. Judge Neway LJ recognised the position

[30] *Kireeva v Bedzhamov* [2022] 3 WLR 1252.
[31] *Ibid* at [102].

in *Singularis* that "*the principle of modified universalism is part of the common law, but it is necessary to bear in mind, first, that it is subject to local law and local public policy and, secondly, that the court can only ever act within the limits of its own statutory and common law powers*" and "*the question how far it is appropriate to develop the common law does not admit of a single, universal answer*".[32] The honourable judge declined to extend the common law power to allow a foreign office-holder "*to obtain either title to English immovable property or its sale which would deprive the owner of what under English law is his property*" and was of the opinion that "*it is for Parliament to determine whether and, if so, under what conditions that should be permissible*"[33].

46. On the other hand, in a dissenting judgment, Judge Arnold LJ was of the opinion that it would be a principled development of the common law to grant assistance to the recognised foreign office holder by appointing a receiver in respect of the land located in England. Judge Arnold LJ recognised the position in *Singularis* that the principle of universalism dictates that "*English courts should, subject to local law and local policy, co-operate with the courts in the country of the bankruptcy to ensure that all the bankrupt's assets are distributed to the creditors under a single system of distribution*" and that the English courts "*can only act within the limits of their own statutory and common law powers, but that includes any proper development of the common law*[34]*".* The honourable judge was of the opinion that it would not be inconsistent for the English courts to "*come to the assistance of a foreign office holder whose appointment has been recognised by exercising a discretionary power available under English law to make an in personam order appointing a receiver in respect of the immovable*[35]**"**. This is not inconsistent with English court's power to authorise the appointment of a receiver of the rents and profits of an immovable property located in England in the case of the winding up of foreign companies under the law of incorporation, which was a statement of law cited with apparent approval by Lord Sumption JSC in *Singularis*[36]. Judge Arnold LJ was of the opinion that this does not "*amount to judicial legislation*" and "*at worst, it would be a principled development of the law*[37]**"**.

[32] *Ibid* at [87].
[33] *Ibid* at [89].
[34] *Ibid* at [124].
[35] *Ibid* at [126].
[36] *Singularis Holdings Ltd v PricewaterhouseCoopers* [2015] 2 WLR 971 at [12].
[37] *Kireeva v Bedzhamov* [2022] 3 SLR 12553 at [127].

47. Judge Stuart-Smith LJ agreed with the opinion of Judge Neway LJ's opinion that the English courts do not have common law power to grant assistance to the foreign appointed representative to deal with the land in England, and was of the opinion that the appointment of a receiver in respect of the land located in England would be "an unprincipled negation of the immovable rule[38]" and that there is "*no principled basis upon which it would be right to appoint as a receiver (with or without a power of sale) a person who is considered by English law to have no title to or interest*[39]" in the land located in England.

IV. SINGAPORE

48. In contrast to the reversal of the English court's approach on common law assistance to uphold the principle of universalism of insolvency proceedings, the Singapore courts took a more progressive approach in the development of common law jurisdiction that advances the universalist principles of cross-border insolvency ever since common law cases are no longer legally binding on the Singapore courts.

49. The significant decision of the Singapore courts in respect of the common law cooperation of the cross-border insolvency proceedings after the departure from the influence of English common law was *Beluga Chartering GmbH (in liquidation) v Beluga Projects (Singapore) Pte Ltd (in liquidation)* [2014] 2 SLR 815 ("***Beluga Chartering***").

A. Beluga Chartering

50. The broad facts of *Beluga Chartering*[40] are these: Beluga Chartering had been placed in liquidation in Germany and was wound up in Singapore as an unregistered foreign company. The Court of Appeal in *Beluga Chartering* had to consider the extent and applicability of the ancillary liquidation doctrine, and

[38] *Ibid* at [136].
[39] *Ibid* at [136].
[40] *Beluga Chartering GmbH (in liquidation) v Beluga Projects (Singapore) Pte Ltd (in liquidation)* [2014] 2 SLR 815.

whether there was discretion to ring-fence local assets of companies that did not fall under section 377(3)(c) of the Singapore Companies Act.

51. The Singapore Court of Appeal upheld the fact that Beluga Chartering was an unregistered foreign company not carrying on business in Singapore, therefore section 377(3)(c) of the Singapore Companies Act (which provides for ring-fencing of assets of foreign companies carrying on business in Singapore) did not apply[41]. Instead, the Singapore court endorsed the principle of universalism[42]and held that common law ancillary liquidation doctrine was historically entrenched as part of the common law and existing in Singapore alongside its statutory insolvency regime and that the Singapore courts has a power under this doctrine to order the local liquidator to remit assets that are gathered in locally to the principal place of liquidation[43].

52. In its consideration of the common law doctrine of ancillary liquidation, the Singapore court in *Beluga Chartering* noted the different conceptual approaches to the common law doctrine in *HIH*: the opinion by Lord Hoffmann that "*courts did have a discretion under the common law premised on the principle of modified universalism to order assets collected locally in the ancillary liquidation to be remitted to the liquidators of the principal liquidation regardless of any statutory provision*" and on the other hand, Lord Scott was of the opinion that "*the courts, in exercising their power under common law ancillary liquidation, had no discretion to disapply the English statutory insolvency regime or deprive creditors of any of their statutory rights*"[44]. The Singapore court reserved it position on what the Singapore common law position ought to be in the absence of clear authority at that time[45].

53. Nonetheless, the Singapore court took the position in *Beluga Chartering* that it is "*clear that the traditional common law position gives the court a general power to order the remittal of realised assets to the principal place of liquidation. But it does not have the power to authorise the local liquidator to ignore the statutory*

[41] *Ibid* at [54].
[42] *Ibid* at [99].
[43] *Ibid* at [58].
[44] *Ibid* at [73].
[45] *Ibid* at [76].

insolvency scheme so as to 'deprive creditors proving in a [local] liquidation of their statutory rights under that scheme"[46].

54. However, the Singapore court in *Beluga Chartering* was of the opinion that there is "*certainly nothing in the development of the common law ancillary liquidation doctrine to warrant a view being taken that a statutory scheme on priority can be applied by analogy under the common law doctrine to situations that were not contemplated by Parliament*"[47].

55. The Singapore Court of Appeal in *Beluga Chartering* also made observations on the position of a foreign liquidator where local liquidation proceedings are not initiated, although this issue did not arise on the facts of the appeal. In this situation where a foreign company is not concurrently wound up in Singapore, any issues that arise before the Singapore courts would involve questions of recognition: recognition of the title of the foreign liquidator and the recognition of the foreign proceedings[48]. In relation to the recognition of the title of a foreign liquidator, the Singapore Court of Appeal was of the view that under common law, the local court should recognise the authority and title of a foreign liquidator to act on behalf of a company if the liquidator is properly appointed under the law of the place of incorporation of the company[49]. In relation to the recognition of the foreign proceedings or the effect of the initiation of such proceedings would have, the Singapore Court of Appeal was of the view that under common law rules of recognition, a court would not recognise the jurisdiction of a foreign legislature or court to impose a stay on any proceedings in the forum court and so would not be bound by any such stay[50].

56. The Singapore Court of Appeal in *Beluga Chartering* offered provisional observations that it remains open to the courts to assist the foreign liquidation proceedings by exercising their inherent discretion to stay proceedings. The Singapore court recognised, as a broad statement of principle, the desirability and practicality of a universal collection and distribution of assets and that a creditor should not be able to gain an unfair priority by an attachment or execution on assets

[46] *Ibid* at [77].
[47] *Ibid* at [80].
[48] *Ibid* at [85].
[49] *Ibid* at [86].
[50] *Ibid* at [90].

located within the jurisdiction of the court subsequent to a winding-up order made elsewhere[51]. However, the Singapore court was of the opinion that how it will render assistance to foreign winding-up proceedings through the regulation of its own proceedings will depend on the particular circumstances before it[52].

57. Subsequent to *Beluga Chartering*, the Singapore courts reiterated the endorsement of the principle of universalism in cases such as *Allenger, Shiona (trustee-in-bankruptcy estate of Pelletier, Richard Paul Joseph) v Pelletier, Olga and another* [2022] SLR 353, and further developed the common law universalist principles in cases such as *Re Opti-Medix Ltd* [2016] SHJC 10 ("***Opti-Medix***") and *Re Taisoo Suk (as foreign representative of Hanjin Shipping Co Ltd)* [2016] 5 SLR 787 ("***Taisoo Suk***").

B. *Opti-Medix*

58. The broad facts of *Opti-Medix*[53] are these: Bankruptcy orders were made by the Tokyo District Court in Japan against foreign companies incorporated in the BVI on the basis that the businesses of the foreign companies were conducted in Japan. The Japanese bankruptcy trustee sought recognition of his appointment to administer the foreign companies' assets in Singapore.

59. This decision is significant as it was the first reported judgment in which the Singapore courts expressly grounded its decision to recognise a foreign liquidator on the basis of the Company's centre of main interest ("**COMI**") rather than on the territorial locus of the company's place of incorporation. The Singapore court agreed with the approach indicated by Lord Hoffman in *HIH* that the COMI test was a basis for the recognition at common law of foreign insolvency proceedings[54] and focused on COMI-type factors for choosing the primary place of insolvency proceedings rather than the old incorporation doctrine.

60. The Singapore court recognised that Singapore was warming to universalist notions in its insolvency regime[55] and that a consequence of a greater sensitivity

[51] *Ibid* at [99].
[52] *Ibid* at [99].
[53] *Re Opti-Medix Ltd* [2016] SHJC 10.
[54] *Re Opti-Medix Ltd* [2016] SHJC 10 at [19].
[55] *Ibid* at [17].

to universalist notions in insolvency is a greater readiness to go beyond traditional bases for recognising foreign insolvency proceedings[56]. It noted that in cross-border insolvency, there was a general movement away from traditional, territorial focus on the interests of the local creditors towards recognition that universal cooperation between jurisdictions is a necessary part of the contemporary world, and that this is the most conductive to the orderly conduct of business and resolution of business failures across-jurisdictions[57].

C. *Taisoo Suk*

61. In *Taisoo Suk*[58] the Singapore High Court exercised its common law inherent jurisdiction to grant a temporary stay on all present proceedings and a restraint against fresh proceedings against Hanjin and its Singapore subsidiaries or enforcement or execution against any of their assets for the purposes of lending assistance to foreign insolvency proceedings.

62. The broad facts of *Taisoo Suk*[59] are these: Hanjin Shipping Co Ltd ('**Hanjin**") had commenced rehabilitation proceedings in the Korean bankruptcy court and obtained provisional orders preserving its assets. Under the Korean regime, a rehabilitation plan would be presented to creditors. If approved, the plan would be submitted to the Korean courts for sanction. However, this process would take time and Hanjin's vessels transiting Singapore were at risk of arrest in the meantime. Hanjin had applied for similar preservation orders and obtained recognition and relief in the UK courts and the US courts.

63. The Singapore court In *Taisoo Suk* was satisfied that Hanjin's common law COMI was Korea which justified the recognition of the Korean proceedings. The Singapore court was mindful that "*the grant of recognition and assistance to the Korean restructuring proceedings constituted a development of the common law in Singapore*, but the court was satisfied that "*the development was principled and justified*[60]". The Singapore Court also noted that the differences between the

[56] *Ibid* at [18].
[57] *Ibid* at [17].
[58] *Re Taisoo Suk (as foreign representative of Hanjin Shipping Co Ltd)* [2016] 5 SLR 787.
[59] *Ibid*.
[60] *Ibid* at [13].

Korean and Singapore restructuring regimes did not pose an obstacle to recognition and assistance being rendered to the Korean insolvency proceedings[61].

64. This was the first reported decision in which the Singapore courts extended its common law inherent jurisdiction to make orders necessary to prevent injustice or abuse of process for the purposes of lending assistance to foreign restructuring and rehabilitation orders and/or proceedings.

D. *Pacific Andes*

65. The case in *Pacific Andes Resources Development Ltd* [2018] 5 SLR 125 ("***Pacific Andes***") represents an important decision in the development of the Singapore's common law jurisdiction to render assistance and cooperation to foreign insolvency proceedings.

66. In *Pacific Andes*[62], the Singapore courts was asked to, but it did not, extend the common law jurisdiction to make orders to assist foreign insolvency proceedings to make orders to restrain foreign proceedings commenced by creditors within the jurisdiction of the Singapore courts. The Singapore courts also extended the Singapore common law jurisdiction to render assistance and cooperation to international insolvency proceedings by declining to follow the English common law refusal to recognise foreign bankruptcy discharge of a contractual obligation, which is widely knowns as the principle in *Antony Gibbs & Sons v La Societe Industrielle et Commerciale des Metaux 25 Q.B.D. 399* ("***Gibbs***").

67. The broad facts of *Pacific Andes* are these: Pacific Andes Resources Development Ltd ("**PARD**") was a debtor company whose COMI was Singapore but whose main business was conducted outside Singapore and through its subsidiaries. PARD applied for moratorium under section 210(10) of the Singapore Companies Act to restrain creditors against commencing actions or proceedings in Singapore or elsewhere. One of the issues before the Singapore court was if it had the jurisdiction, whether under section 210(10) of the Singapore Companies Act or under its inherent jurisdiction, to restrain creditors that are within the jurisdiction of the Singapore court from commencing proceedings outside Singapore.

[61] *Ibid* at [27].
[62] *Pacific Andes Resources Development Ltd* [2018] 5 SLR 125.

68. First, the Singapore court in *Pacific Andes* was of the opinion that the jurisprudential basis for the inherent jurisdiction under common law to restrain creditors from commencing proceedings outside Singapore in the context of a liquidation or administration was to "*protect the integrity of its insolvency jurisdiction over the company and its assets with a view to ensuring that the statutory scheme is complied with*[63]". However, the Singapore court declined to extend such common law jurisdiction to restrain creditors from commencing proceedings outside Singapore in the context of a liquidation or administration by analogy to schemes of arrangement proceedings. This was because the Singapore court was of the opinion that the scheme of arrangement regime is not predicated on insolvency unlike judicial management and most instances of liquidation[64]. However, the Singapore court indicated that it may have inherent jurisdiction to restrain proceedings commenced outside Singapore in the situation where the Singapore courts had sanctioned the scheme of arrangement, whereby in such an instance the court was "*effectively giving effect to a scheme of arrangement which had statutorily compromised an applicant's debts*[65]" and the exercise of the inherent jurisdiction is "*to ensure observance with the scheme*[66]".

69. Second, the Singapore court in *Pacific Andes* declined to follow the English common law refusal to recognise foreign bankruptcy discharge of a contractual obligation, which is widely knowns as the principle in Gibbs[67]. The Singapore court analysed the development of the common law rule in *Gibbs* in various common law jurisdictions as well as academic authorities and it was of the opinion that it is a principled basis to approach to the discharge of a debt not under its governing law[68].

70. Third, the Singapore court in *Pacific Andes* commended the approach adopted in *Re Contel Corporation Ltd* [2011] SC (Bda) 14 Com, where the Bermuda courts applied the principle of universalism in *Cambridge Gas* and granted recognised of the Singapore order sanctioning a scheme of arrangement, as progressive. The Singapore court was of the opinion that this approach is "*entirely in step with the*

[63] *Ibid* at [23] and [24].
[64] *Ibid* at [24].
[65] *Ibid* at [28].
[66] *Ibid* at [28].
[67] *Ibid* at [52].
[68] *Ibid* at [49].

views expressed by the Singapore Court of Appeal in Beluga Chartering at [17]" and by the Singapore High Court in *Opti-Medix.*

E. *Arris Solutions*

71. In *Arris Solutions Inc v Asian Broadcasting Network (M) Sdn Bhd* [2017] SGHC(I) 1 ("***Arris Solutions***"), the Singapore International Commercial Court clarified the limits of the Singapore courts' common law universalist principles to grant recognition and assistance to foreign insolvency proceedings.

72. The broad facts of *Arris Solutions*[69] are these: Legal action was commenced in the Singapore courts against Asian Broadcasting Network (M) Sdn Bhd ("**ABN**"), a company incorporated in Malaysia, for recovery of certain debts owed by ABN. As part of its defence to the legal action, ABN disputed whether the debts were owed to the parties that commenced the legal action, i.e. whether these parties were creditors of ABN. Three days before the hearing to determine the legal action, ABN filed an application to seek the exercise of the Singapore court's inherent jurisdiction under common law for the recognition of the Malaysian restructuring proceedings, a stay of current, pending, contingent or fresh proceedings and a restraint of enforcement or execution against any of the company's assets. ABN relied on the common law jurisdiction and principles of universalism recognised and adopted in *Beluga Chartering and Taisoo Suk* to support the application.

73. The Singapore court in *Arris Solutions* accepted that the court's inherent common law jurisdiction to recognise foreign winding up proceedings and to render assistance by regulating its own proceedings also extended to other forms of foreign insolvency proceedings such as restructuring and rehabilitation[70]. However, the Singapore court was of the opinion that the exercise of this jurisdiction was discretionary and would depend on the circumstances of each case. The Singapore court held that it would not assist the foreign proceedings to implement a scheme of arrangement when there is an issue of whether the plaintiffs are creditors of the company and declined to exercise the Court's discretion to stay the current proceedings. The Singapore court was of the view that "*it will assist the*

[69] *Arris Solutions Inc v Asian Broadcasting Network (M) Sdn Bhd* [2017] SGHC(I) 1.
[70] *Ibid* at [36] and [37].

foreign proceedings for a scheme of arrangement .. to determine whether the Defendant owes these sums of monies to the Plaintiffs."[71]

74. After the Singapore court in *Arris Solutions* determined the issue of whether the plaintiffs are creditors of ABN, the Singapore court applied the principles in *Beluga Chartering and Taisoo* Suk and exercised its inherent jurisdiction under common law to grant a stay of execution of the judgments and interest pending the outcome of the restructuring proceedings commenced by ABN in Malaysia[72].

F. *Gulf Pacific Shipping*

75. The Singapore courts further developed the common law universalist principles in the case of *Re Gulf Pacific Shipping Ltd* [2016] SGHC 287 ("***Gulf Pacific Shipping***").

76. The broad facts of *Gulf Pacific Shipping*[73] are these: A company incorporated and registered in the Hong Kong Special Administrative Region in the People's Republic of China, Guild Pacific Shipping Limited ("**GPS**") was the wholly-owned subsidiary of STX Pan Ocean (Hong Kong) Co Ltd ("**STX HK**"). The ultimate holding company of STX HK and GPS was put into rehabilitation by the Korean courts and STK HK itself was ordered to be wound up by the High Court of Kong Kong. GPS was placed into creditors' voluntary winding up. The Hong Kong liquidators of GPS make an application to the Singapore courts to seek recognition of their appointment as liquidators of GPS and for the disclosure of information in relation to a closed bank account in Singapore. The issue before the Singapore court was whether recognition should be denied as GPS was liquidated through a voluntary winding up. Lord Sumption in *Singularis* was of the opinion that the common law powers of assistance to foreign liquidation did not extend to voluntary winding up[74].

77. The Singapore court in *Gulf Pacific Shipping* considered the facts in *Singularis* and was of the opinion that it concerned a different factual situation from the factual situation in *Gulf Pacific Shipping.* In *Singularis*, documents were sought from

[71] *Ibid* at [40].
[72] *Ibid* at [46].
[73] *Re Gulf Pacific Shipping Ltd* [2016] SGHC 287.
[74] *Singularis Holdings Ltd v PricewaterhouseCoopers* [2015] 2 WLR 971 at [25].

auditors of a company but in *Gulf Pacific Shipping* the information and documents sought were in respect of assets of the company.

78. The Singapore court in *Gulf Pacific Shipping* declined to adopt the views of Lord Sumption in *Singularis* that common law powers of assistance to foreign liquidation did not extend to voluntary winding up and it preferred the view expressed by Lord Neuberger in *Singularis* who described the distinction between voluntary and compulsory liquidation as potentially arbitrary. Voluntary winding up was characterised by Lord Sumption as an essentially private arrangement[75], and not the same nature as insolvency involving officers of a foreign court.

79. The Singapore court in *Gulf Pacific Shipping* reached its decision not to adopt the distinction between voluntary and compulsory liquidation based on a principled approach as stated in *Re Opti-Medix*. In contrast with the approach as expressed by Lord Neuberger in *Singularis* that was "*on the whole cautious about common law assistance to foreign liquidators*"[76], the Singapore court adopted the broader and philosophical approach to international insolvency by the US courts in *In re Betcorp Limited (In Liquidation)* 400 BR 266 (Bankr. D. Nev. 2009). The Singapore court noted that "*the jurisprudence of the US Bankruptcy Courts has much to offer a Singapore court faced with an insolvency case which engages issues of either philosophical approach (at one end) or practical solutions (on the other)*[77]".

80. In essence, the Singapore court adopted the approach that it would lean towards an approach that advances the universalist principles of cross-border insolvency, an approach stated in *Opti-Medix*[78]. The Singapore Court in *Gulf Pacific Shipping* was of the view that traditional, territorial focus on the interests of local creditors no longer has primacy over more internationalist concerns. The Singapore Court was of the view that the foundational doctrine in the recognition of foreign insolvency proceedings is the promotion and facilitation of the orderly distribution of assets, as well as the orderly resolution and dissolution of the affairs of entities being wound up. Thus, the precise mode of the winding up would not generally be material, and no distinction should be drawn between voluntary and compulsory

[75] *Ibid*.
[76] *Re Gulf Pacific Shipping Ltd* [2016] SGHC 287 at [9].
[77] *Ibid* at [11].
[78] *Re Opti-Medix Ltd* [2016] SHJC 10 at [18].

processes, or between in court and out of court dissolution[79]. This appear to be more progressive approach and willingness to extend the powers of assistance to foreign liquidation.

G. *Rooftop Group*

81. In 2017, the UNCITRAL Model Law was introduced into Singapore as set out in the Tenth Schedule to the Singapore Companies Act ("**Singapore Model Law**"). The Singapore Model Law generally applies where "*assistance is sought in Singapore by a foreign court or a foreign representative in connection with a foreign proceeding".*[80] The Singapore Model Law was designed, not to make insolvency laws in different countries uniform, but to supplement existing laws[81].

82. After the introduction of the Singapore Model Law, the Singapore Court clarified the position of the Singapore common law jurisdiction in relation to cross-border insolvency proceedings in cases such as in *Re Rooftop Group International Pte Ltd* [2020] 4 SLR 680 ("***Rooftop Group***") and *Re Tantleff, Alan* [2022] SGHC 147 ("***Re Tantleff***").

83. The broad facts of *Rooftop Group*[82] are these: Rooftop Group International Pte Ltd ("**RGIP**") is a Singapore incorporated company and conducted its business in the United States market. Litigation was pursued against RGIP in Singapore and RGIP filed for Chapter 11 in the US Bankruptcy Court for the Northern District of Texas ("**RGIP Chapter 11 Proceedings**"). RGIP made an application to seek the assistance of the Singapore courts for the recognition of the RGIP Chapter 11 Proceedings and the appointed foreign representatives of RGIP and the restrain of the commencement or continuation of legal proceedings against RGIP and its assets.

84. The Singapore High Court in *Rooftop Group* held that RGIP's COMI was situated in Singapore by virtue of the presumption in favour of the place of incorporation

[79] *Re Gulf Pacific Shipping Ltd* [2016] SGHC 287 at [10].
[80] Article 1(1)(a) Singapore Model Law; *Allenger Shiona v Pellertier Olga* [2022] 3 SLR 353 at [62].
[81] Singapore Parliamentary Debates, Official report (10 March 2017) vol 94 (Edwin Tong Chun Fai, Member of Parliament for Marine Parade GRC); *Allenger, Shiona (trustee-in-bankruptcy of the estate of Pelletier, Richard Paul Joseph) v Pelletier, Olga and another* [2022] 3 SLR 353 at [70].
[82] *Re Rooftop Group International Pte Ltd* [2020] 4 SLR 680.

and granted recognition of the RGIP Chapter 11 Proceedings as a foreign non-main proceedings under Article 17 of the Singapore Model Law but it did not grant the stay of enforcement proceedings because the proceedings were not against the assets of RGIP or parties had agreed to allow the proceedings to continue.

85. The Singapore High Court in *Rooftop Group* considered RGIP's alternatively invoked the common law recognition as a basis to seek a stay of the enforcement proceedings and held that in general where the Singapore Model Law is applicable to the subject matter, the Singapore courts would be slow to allow common law recognition to be involved as an alternative[83]. The Singapore Court was of the opinion that "*the existence of a detailed recognition regime created by legislation displaces the need for common law doctrine to apply*" and that "*the invocation of the common law should only be for situations where recognition is not catered for by the Model Law, which would appear to be highly unlikely given its structure.*"[84] This position was echoed in ***Re Tantleff***[85].

86. The broad facts of *Re Tantleff*[86] are these: Eagle Hospitality Real Estate Investment Trust ("**EH-REIT**") was a publicly held real estate investment trust in Singapore. EH-REIT and its direct and indirect subsidiaries (collectively the "**Eagle Hospitality Group**") was listed on the Singapore Exchange Securities Trading Limited with the principal strategy of investing in a diversified portfolio of income-producing real estate properties which are used primarily for hospitality and/or hospitality-related purposes. The Eagle Hospitality Group faced serious financial difficulties and due to liquidity issues and potential impending legal actions to be taken by the creditors of the Eagle Hospitality Group, EH-REIT and its downstream companies voluntarily filed for Chapter 11 reorganisation ("**Chapter 11 Proceedings**"). The appointed representative of EH-REIT and certain of its Singapore incorporated subsidiaries ("**Singapore Chapter 11 Subsidiaries**") made an application to the Singapore Court to seek recognition of the Chapter 11 Proceedings and the Chapter 11 plan of liquidation which was approved by the US Bankruptcy Court ("**Chapter 11 Plan**").

[83] *Ibid* at [58].
[84] *Ibid* at [58].
[85] *Re Tantleff, Alan* [2022] SGHC 147 at [84].
[86] *Ibid*.

87. The Singapore Court in *Re Tantleff* found that the Singapore Chapter 11 Subsidiaries' COMI were in the United States and held that the Chapter 11 Proceedings in relation to the Singapore Chapter 11 Subsidiaries are recognised as foreign main proceedings under Article 2(f) and Article 17(2)(a) of the Singapore Model Law and the Chapter 11 Plan under Article 21(1)(g) of the Singapore Model Law.

88. However, the Singapore Court in *Re Tantleff* held that the Singapore Model Law does not apply to EH-REIT, which was a business trust, and not a corporation, and was of the view that common law recognition would be required. In that context, the Singapore Court reiterated the approach stated in *Rooftop Group* that it would be reluctant to invoke common law recognition where it would seem to have been contemplated that the Singapore Model Law would govern the proceedings[87], either by allowing or prohibiting a particular result.

V. CONCLUSION

89. From the review of the decisions of the English courts and the Singapore courts, the principle of universalism of cross-border insolvency proceedings is very much alive. However, the approaches by the English courts and the Singapore courts to grant common law assistance to uphold the principle of universalism of insolvency proceedings differs.

90. Based on the decisions of the English courts reviewed, *Cambridge Gas* marked the furthest that the English court have gone in developing the common law powers of the court to assist a foreign liquidation. After the decision in *Cambridge Gas*, although the English courts have re-affirmed the principle of universalism as part of the English common law in relation to cross-border insolvency, the English courts have demonstrated on the whole a cautious approach in the development of the common law jurisdiction to grant assistance and cooperate with foreign insolvency proceedings.

91. Although Singapore inherited the English common law as a British colony and the English common law continued to apply after Singapore gained independence, the

[87] *Ibid*.

evolution of the approach of the Singapore courts to cross-border co-operation has not mirrored that of the English courts.

92. Based on the decisions of the Singapore courts reviewed after the departure from the influence of English common law, it appears that the Singapore courts adopt a more progressive approach in the development of common law jurisdiction that advances the universalist principles of cross-border insolvency, as compared to the English courts post-*Cambridge Gas*.

93. The Singapore courts have expressed the preference to follow the approach by the US courts which adopt the broader and philosophical approach to international insolvency as exemplified in *In re Betcorp Limited (In Liquidation)* 400 BR 266 (Bankr. D. Nev. 2009). The Singapore court noted that "*the jurisprudence of the US Bankruptcy Courts has much to offer a Singapore court faced with an insolvency case which engages issues of either philosophical approach (at one end) or practical solutions (on the other)*"[88].

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[88] *Re Gulf Pacific Shipping Ltd* [2016] SGHC 287 at [11].