

CROSS-BORDER INSOLVENCY ARRANGEMENTS BETWEEN SINGAPORE AND MALAYSIA

A. Introduction

Ladies and Gentleman, I have been assigned to deliver a talk on the above subject.

1. I would like to split my talk into the following segments:
 - (i) I will explore the jurisdictional basis for corporate insolvency. In this segment, I will highlight the rules relating to liquidation of foreign companies and the recognition, if any, of such foreign liquidation in a domestic court.
 - (ii) In the second segment, I will touch on the reciprocal measures in force between Singapore and Malaysia. I will deal with both the personal and corporate insolvency issues.
 - (iii) In the third segment, I will look at the models of the reciprocal arrangements in place in jurisdictions like UK and Australia and for their possible incorporation in Malaysia and Singapore.
 - (iv) In the fourth segment, I would touch on corporate a investigation which falls short of formal institution of insolvency proceedings.
 - (v) In the last segment, I will deal with claims of foreign creditors and recognition of foreign insolvency orders in Singapore and Malaysia.
2. I would like to begin by stating that reciprocal insolvency arrangements between Singapore and Malaysia are rudimentary and outdated having its origins in legislation passed some 50 years ago and it only applies to personal bankruptcy.
3. In terms of corporate insolvency, the legislation is very general without reference to any one country and is basically limited to the recognition of a foreign liquidator duly appointed under the laws of the incorporation of the insolvent company. With this background I will examine the jurisdictional basis for corporate insolvency of foreign companies.
4. In Singapore and Malaysia there is no separate standalone insolvency legislation applying to both a personal insolvency and a corporate insolvency involving corporations and other legal persons. Unlike the United Kingdom which has a consolidated Insolvency Act applicable to individuals, companies and other legal persons, insolvency practitioners in Singapore and Malaysia have to contend with the

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Companies Act (for corporate insolvency) and the Bankruptcy Act (for personal insolvency).

B. Jurisdictional Basis for Corporate Insolvency

1. The law relating to corporate insolvency is contained in the Companies Acts of Malaysia and Singapore. The corporate insolvency regime embodied therein is derived in part from the Australian Uniform Companies Act of 1961, itself re-codified in 1981 and again in 1989. Like the Australian legislation, both the Malaysian and Singapore Acts contain two separate sets of provisions dealing with jurisdiction over a foreign company. The first is where that company has registered to conduct business within the jurisdiction and second, where it falls within the definition of an unregistered company.

2. The law in both countries requires a foreign company to register if it wishes to carry on business. There is case law to suggest that registration is an obligation although failure to register does not make the company an illegal association or prevent it from enforcing any rights it may have.

3. Where a registered foreign company goes into liquidation, or has been dissolved, in its home jurisdiction, any person who is a local agent of the foreign company must lodge notice of that fact and notice of the appointment of a liquidator, where one is appointed, within a time period of one month calculated by reference to the dissolution or the beginning of winding up proceedings.

4. The person who has been appointed liquidator in the foreign jurisdiction enjoys the powers of a local liquidator until one is appointed by the local court. This does not mean that the foreign liquidator becomes a Singapore or Malaysia liquidator (as the case may be) as there is Singapore case authority to suggest that a foreign liquidator does not become the liquidator for Singapore (and likewise for Malaysia) merely because he is given the powers of the latter post. This would suggest that appointment of a liquidator in Malaysia or Singapore would result in the revocation of any order vesting title to property in the foreign liquidator made by a local court.

5. A liquidator of a foreign company appointed by the courts must invite all creditors to make their claims against the foreign company within a reasonable time before any distribution of the foreign company's property is made. This is usually performed by advertising in a daily newspaper circulating generally in any country where the foreign company has carried on business at any time prior to liquidation, except in any particular jurisdiction where a liquidator has in fact been appointed.

6. In addition, the liquidator may not pay out a creditor of the foreign company to the exclusion of another creditor of the foreign company without obtaining a court order authorising him to do so. Any payments that are made will be in accordance with domestic rules for the ranking and payment of claims.

7. The liquidator is required to recover and realise all property belonging to the foreign company in Malaysia or Singapore and pay the net amount to the liquidator of the foreign company for its home jurisdiction unless the courts otherwise order. Nevertheless, this is subject to a local “grab-rule”, by which the net amount is only paid after paying any debts and satisfying any liabilities within the local jurisdiction.

8. Commentors have criticised this “**grab-rule**” as running counter to the pari passu principle and equality of treatment. Such a rule, it is said favours the big boys who are likely to be more resilient in proving in multi-jurisdictions in an international insolvency.

9. There is Australian case law authority to suggest that a Court has a discretion to refuse to allow repatriation of assets where, for example, there is a risk that the liquidator in the foreign company’s home jurisdiction may not apply the pari passu principle in the distribution of the assets. This is likely to be followed in Malaysia and Singapore.

10. Where there is no liquidator for the home jurisdiction, the local liquidator may apply to the Court for directions about the disposal of the net amount recovered following winding up of the registered foreign company following disposal of its property in Malaysia or Singapore.

11. Proceedings under the specific jurisdiction rule discussed above are generally treated as being ancillary to proceedings in the foreign company’s home jurisdiction. The Companies Act in both jurisdictions makes references to the term “place of incorporation or origin”. Notwithstanding this, there is no reason why proceedings in a jurisdiction where the company has a closer connection should not be treated as primary proceedings and to treat Singapore or Malaysia as the forum for ancillary proceedings. It should be pointed out that these rules do not apply where there are no proceedings in the home jurisdiction or these proceedings fall short of what are considered as liquidation proceedings. In addition, there is doubt that this provision applied in situations where the foreign company has not in fact registered with the authorities to conduct business.

12. Additional jurisdiction in Malaysia and Singapore to wind up an unregistered company is available in Division 5 of Part X of the respective Acts mentioned in paragraph A4. These rules apply to what are termed ‘unregistered companies’, defined to include a foreign company and any partnership, association or company consisting of more than 5 members, but do not include a company incorporated under the Act. The rules in this part are stated to be in addition to and do not supersede any provisions contained in the relevant Act or any other law dealing with the winding up of companies. The same powers are, in fact, given to the courts or a appointed liquidator to perform any act in the case of a company falling under these rules as is normally performed in respect of the winding up of companies.

13. As a general principle, an unregistered company may be wound up notwithstanding that it is being wound up or has been dissolved or has otherwise

ceased to exist as a company by virtue of the laws of the place where it was incorporated. An unregistered company may be wound up under Part X of the relevant Act, which deals with winding up in general, subject to certain necessary adaptations, for example, the principal place of business in Malaysia or Singapore is deemed to be the registered office of the foreign company.

14. An unregistered company may be wound up where it is unable to pay its debts, where it has been dissolved, where it has ceased to carry on business in Malaysia or Singapore, where it has a place of business in these countries only for the purpose of winding up its business and where the court is of the opinion that it is just and equitable that it should be wound up.

15. Instances in which an unregistered company is deemed to be unable to pay its debts include where:

- (i) it fails to pay or otherwise secure or compound within three weeks following the presentation of a demand made by a creditor for payment of a sum in excess of the statutory set amount;
- (ii) it fails to take steps upon the service of notice of an action or other proceedings by another party on either a shareholder or the company concerned by paying any debt due or taking steps to meet any demands which have been made;
- (iii) execution or enforcement of a judgement obtained in any court has not been satisfied by the company; and
- (iv) it is proved to the satisfaction of the Court that the company is unable to pay its debts.

16. One critical difference between a winding-up of a local company in Malaysia and Singapore and the winding up of a foreign company is that voluntary winding up is not available in the latter case.

17. After the winding up of an unregistered company, any property (including any claim, right or remedy affecting that property) belonging to that body remains in Malaysia or Singapore, the legal or equitable estate or other interest therein will vest in the person entitled under the law of the company's place of incorporation or origin. An element of reciprocity is required for the operation of this section as the place of origin must be a country, designated by the Government Minister responsible as having laws containing provisions similar to those set out in these rules.

C. Mutual Assistance Measures

1. In the Commonwealth of which Singapore and Malaysia is a part of, bankruptcy and insolvency legislation passed at various periods contain provisions embodying

mutual assistance schemes. The significant milestone was the enactment of the Bankruptcy 1914 in the United Kingdom which was the centrepiece legislation empowering courts within the Commonwealth to request other courts to assist in the enforcement of bankruptcy proceedings within their own jurisdiction. The reciprocal arrangements were enacted to cope with the rising numbers of insolvencies within the Commonwealth.

2. The leading case on the above-mentioned Bankruptcy Act is **Re-A Debtor**. Briefly the facts were these. A solicitor in Jersey with financial difficulties had an order of “**en désastre**” (a kind of order similar to bankruptcy) made against him. The Jersey court made a request for an order in aid appointing the Viscount receiver of the solicitor’s movable property in England. The solicitor challenged the request on the basis that the proceedings in Jersey were not bankruptcy proceedings. The court rejected this contention stating that the definition of “**bankruptcy**” referred to the judicial process of dealing with insolvent persons and was prepared to take a liberal view of the provisions on the basis that these provisions were designed to effect co-operation between courts acting under different systems of laws. Once an English court was satisfied that the request for aid fell within the ambit of the provision, there was no general duty to scrutinise anterior proceedings unless it could be shown that they were defective under the proper law of the court or it was against public policy in England.

D. Personal Insolvency

1. In the area of personal insolvency there is reciprocal recognition and enforcement of bankruptcy judgments in both Malaysia and Singapore.

2. The applicable sections are 151 and 152 of the Singapore Bankruptcy Act 1995 and section 104 of the Malaysia Bankruptcy Act 1967. The sections are principally designed to ensure close cooperation between Singapore and Malaysian courts, a clear reflection of the close historical links between the two countries. What is significant is that the provision provide for the mutual recognition of acts of the Official Assignee without further formality.

3. The sections permit the High Court of each jurisdiction to act in aid of and be auxiliary to the courts of the other jurisdiction as well as the courts of any other designated country with jurisdiction in bankruptcy and insolvency matters, provided that these courts act in aid of and be auxiliary to the courts in either Malaysia or Singapore. Countries may be designated by the respective authorities through notification in the Official Gazette of Malaysia or Singapore.

4. An order of any such court seeking aid through a request to the High Court is deemed sufficient to allow the High Court to exercise jurisdiction in respect of the matter. This jurisdiction may be that which the High Court or the other court could exercise in comparable matters within their respective jurisdictions.

5. One notable difference between the legislation in Malaysia and Singapore is the inclusion in the Malaysian Act of an extra sub-section stating that any discretion exercised by the High Court in matters of aid must have regard to the rules of private international law.

6. As for the status of the Official Assignee, the provisions in Malaysia and Singapore require notification in the Gazette. Notification is effectively a declaration that the respective Governments have entered into an agreement for the mutual recognition of each other's Official Assignee. Recognition would automatically allow property in any jurisdiction to be vested in the Official Assignee appointed in the other jurisdiction where proceedings have been opened in respect of the debtor in that other jurisdiction. An exception is made for property in any jurisdiction where there are pending proceedings in that jurisdiction until and unless those proceedings have been withdrawn or dismissed.

7. To facilitate recognition, the production by courts in either jurisdiction of an order of bankruptcy is deemed conclusive proof in the courts in the other jurisdiction of the order having been made. Furthermore, the Official Assignees of either jurisdiction may sue in their own names in the courts of the other jurisdiction.

8. Let me give all of you a real life working example which occurred recently where a Malaysian was adjudicated a bankrupt by a Singapore Court. He had property in Kuala Lumpur. The bankrupt absconded to Malaysia.

9. The Official Assignee in Singapore took steps to seize his property in Malaysia and a search of the property showed that he had a half-share interest.

10. The Official Assignee entered a caveat against the property following advice from Malaysian counsel that they were entitled under Section 104 of the Malaysia Bankruptcy Act (equivalent to section 152 of the Singapore Bankruptcy), to have the property vested in the Official Assignee of Singapore. Meanwhile the bankrupt served notice of removal of caveat under the National Code. In applying for removal of the caveat lodged, the proprietor does not have to state any ground for removal. It is for the caveator, in applying for extension of the caveat (caveat is only an interim protection, pending registration of title in the name of the caveator) to justify the extension of the caveat.

11. Since it involved land, registration in the name of the Official Assignee under section 349 of the Malaysian National Land Code 1965 was required which contains provisions on the transmission of the property to the Official Assignee on bankruptcy, and provides that where the Official Assignee claims any interest in land under any law relating to bankruptcy, he may apply to the Registrar for the registration thereof in his name, and the Registrar shall give effect to the application by endorsing a memorial of the Transmission on the title, and that no interest shall vest in the Official Assignee under any adjudication of bankruptcy until it has been registered in his name.

12. The issue was whether the expression “**Official Assignee**” in the Malaysian Land Code which refers to the Malaysian Official Assignee could be construed as a reference to the Singapore Official Assignee by reason of Section 104 of the Bankruptcy Act of Malaysia. If so, the Official Assignee could apply under that section for transmission of title.

13. Another alternative was to invoke Section 415 of the National Land Code which provides that where an interest in land is vested in a grantee pursuant to a statute, the caveatee may make an application to the land office for the property to be registered in its name.

14. Unfortunately the court proceedings to challenge the removal notice of the caveat did not go ahead as there was no earmarked fund to carry through the court proceedings. The matter was discontinued.

E. Corporate Insolvency

1. Strangely there are no parallel reciprocal provisions in the Companies Act of Singapore and Malaysian.

2. What is even more surprising is that historically Part XIII of the former consolidated Companies Ordinance contained reciprocal provisions. It is interesting to note that the consolidated text reflected both the position of the Malayan Union and the Straits Settlement, of which Singapore was a part together with Penang and Malacca.

3. Under the reciprocal arrangements contained in the now defunct Companies Ordinance a winding up order made by one of the jurisdictions over a company incorporated in that jurisdiction had effect in the other jurisdiction without the necessity for formal winding up proceedings. These provisions applied on the basis of reciprocity allowing for Official Receivers or other officials appointed in either jurisdiction to act in the other without further formality. Courts took judicial notice of documents authenticated and issued under the seal of signatures of court officials in the other jurisdiction. The powers contained in the provisions were expressed as being in addition to any other remedies created by legislation or made available by the courts.

4. Courts were empowered to transmit winding up orders to another court in another jurisdiction for enforcement or further action by way of an ancillary winding up order. These reciprocal arrangements did not prejudice creditors from applying for a stay before the ancillary order was given. The effect of an ancillary order was to render any attachment, distress or execution against the assets of the company void. No further action or proceeding would be permitted to commence or proceed without the leave of the court.

5. The Official Receiver in the jurisdiction where the ancillary order was made would assume the role of an ancillary liquidator and may exercise all the powers of the Official Receiver to take possession of property, get in and realise assets, carry on the business of the company, pay claims and take proceedings on behalf of the company.

6. In addition the courts had the power to compel discovery and information about the affairs of the company. The courts were also empowered to transmit cases between the principal and ancillary jurisdiction for the determination of a particular issue.

7. Unfortunately, these reciprocal arrangements were not incorporated in the legislations which replaced the Companies Ordinance.

8. We have now a rather anomalous situation. Insofar as personal insolvency is concerned, there are reciprocal arrangements but in a insolvency involving a corporation or other legal persons, there are no reciprocal arrangements between Malaysia and Singapore. A revamp should be made to consolidate provisions relating to the bankruptcy of individuals and the insolvency provisions applicable to companies and other legal persons and to incorporate a comprehensive reciprocal arrangements of the kind perhaps existing in the United Kingdom or Australia.

9. Unfortunately both Singapore and Malaysia have been preoccupied with wider national issues and it is unlikely that a revamp would take place any time soon.

F. Reciprocal Arrangements Models

1. Singapore and Malaysia may look at the models in place in other common law jurisdiction like Australia, United Kingdom, New Zealand and USA. Another possible model is the UNCITRAL model law on Cross-Border Insolvency approved by the UNCITRAL in June 1997.

2. The United Kingdom consolidated its provisions relating to the bankruptcy of individuals and the insolvency procedures applicable to companies and other legal persons in its Insolvency Act. Section 426 of the UK Insolvency Act applies to both types of insolvencies. The provisions allow the courts having jurisdiction in relation to insolvency law in any part of the United Kingdom to assist the courts having the corresponding jurisdiction in any other part of the United Kingdom **or any relevant country or territory**.

3. Under these provisions a request may be made to a court in any part of the United Kingdom by a court in any other part of the United Kingdom or in a relevant country or territory. This request constitutes authority for the court to which the request is made to apply, in relation to any matters specified in the request, the insolvency law applicable by either court in relation to comparable matters falling within its jurisdiction.

4. A “**relevant country or territory**” is defined as meaning any of the Channel Islands or the Isle of Man or any country or territory designated for the purposes of the law. The number of countries to which the law applies is limited, although many of the major Commonwealth jurisdictions are included. The Co-operation of Insolvency Courts (Designation of Relevant Countries and Territories) Orders (SI1986/2123, SI1996/253, SI1998/2766) specify the following: Anguilla, Australia, The Bahamas, Bermuda,

Botswana, Brunei Darussalam, Canada, Cayman Islands, Falkland Islands, Gibraltar, Hong Kong, Eire, Malaysia, Montserrat, New Zealand, St. Helena, South Africa, Turks and Caicos Islands, Tuvalu and the Virgin Islands.

5. In Australia, similar reciprocal arrangements are constituted under Division 9 of Part 5.7 of the Corporations Law. The scheme zeroes in on “**external administration matter**” which is defined as including the winding up in any Australian state or territory of an Australian foreign company, the winding up outside Australia of a body corporate or a Part 5 body and the insolvency of similar bodies. “**Prescribed country**” is defined to mean any country that has been prescribed or a colony, overseas territory or protectorate of that country. Nine countries have been prescribed under this section and s29, Bankruptcy Act 1966: Canada, Jersey, Malaysia, New Zealand, Papua New Guinea, Singapore, Switzerland, the United Kingdom and the United States.

6. Where the court of any state or territory has jurisdiction in any matter arising under the Corporations Law of that jurisdiction, the judges of that court and any of its officers are required to act in aid of, and be auxiliary to each other and to all courts, as well as judges and officers of those courts, that have jurisdiction under corresponding laws in all external administration matters.

7. The Court is required to afford mandatory assistance and auxiliary help to the courts of Australian territories and prescribed countries. Assistance at the discretion of the court may be given to the courts of other countries that have jurisdiction in external administration matters. On receipt of a Letter of Request from a court in an Australian territory or other country, an Australian court may exercise such powers with respect to the matter as it could exercise if the matter had arisen within its own jurisdiction. An Australian court may also issue a Letter of Request to other courts, including courts in an Australian territory or other country, with jurisdiction in comparable matters to act in aid of, and be auxiliary to the Australian court.

8. The leading case in Australia and English law on reciprocity is: **Re: Dallhold**. Dallhold Investments (In Liquidation) (“**DI**”) applied for an order of the winding-up of its wholly-owned subsidiary Dallhold Estates (“**DE**”). DI, with the support of the Australian provincial liquidator of DE, also sought the issue of a Letter of Request addressed to the High Court of Justice in England seeking assistance for the making of an administration order in respect of DE under Part 2 of the UK Insolvency Act. This was opposed by other creditors who sought to be substituted as applicants in lieu of DI and for a winding-up order pursuant to the original application to be made in respect of DE.

9. The Australian Court made a declaration that it was desirable to request the assistance of the High Court in England and issued the Letter of Request. In arriving at its decision to issue the Letter of Request it took the following into account:

- (a) the expression “**external administration matter**” included matters relating to the winding up of DI and therefore it had the mandate to request a foreign court to act in aid of the Australian Court;

- (b) it accepted the submission by DI (the principal creditor of DE), that an administration offered the possibility that the value of an agricultural lease owned by the subsidiary might be preserved for the benefit of the creditors as a whole through administration proceedings.
- (c) it accepted the advice of English solicitors that there were significant doubts as to whether an administration order may be made except at the request of the Australian Court under the reciprocal arrangements.

10. With the Letter of Request the case was brought in England and the grant of an administration order was pleaded. In granting the administration order, the trial judge had this to say:

“It appears.... that the purpose of s426(5) is to give to the requested court a jurisdiction that it might not otherwise have in order that it can give the assistance to the requesting court ...the scheme of subsection (5) appears to be this. The first step is to identify the matters specified in the request. Secondly, the domestic court should ask itself what would be the relevant insolvency law applicable by **[it]** to comparable matters falling within its jurisdiction. Thirdly, it should then apply that insolvency law to the matters specified in the request. The result is that an English court can act on a request by the Federal Court by applying to the matters specified in the request provisions of English insolvency law, including the provisions of s8....”

11. Following the above decision, it is now clear that once a request for assistance is granted, it naturally follows that a court will apply all of the rules of insolvency law that would apply to a domestic insolvency subject to any exercise of discretion in the application of these rules that would feature in a domestic case.

G. Investigations

1. Thus far we have discussed reciprocal arrangements in an insolvency scenario. These will not be available prior to the formal institution of insolvency proceedings.

2. In both Singapore and Malaysia, the Companies Act provide that the affairs of a company may be investigated on the application of the company or of its members or under the direction of the appropriate Government body, which will appoint inspectors to investigate and to report back on the affairs of the company. A foreign company may be the subject of such an investigation provided that the appropriate Government body in Malaysia and Singapore has made a declaration to that effect.

3. In Malaysia and Singapore, an investigation is carried out if the Minister is satisfied that:

- (a) a prima facie case has been established that, for the protection of the public, the holders of interests to which Division 6 of Part IV of the relevant Companies Act applies or the shareholders or creditors of the company or foreign company, it is desirable that the affairs of the company or foreign company should be investigated under this Part;
- (b) it is in the public interest that allegations of fraud, misfeasance or other misconduct by persons who are or have been concerned with the formation or management of the company or foreign company should be investigated under this Part;
- (c) for any other reason it is in the public interest that the affairs of the company or foreign company should be investigated under this Part; and
- (d) in the case of a foreign company, the appropriate authority of another country has requested that a declaration be made pursuant to this section in respect of the company.

4. The powers of inspectors extend widely to the investigation of the affairs of that company or any related corporation. They may require the production of all documents in the custody of officers or agents of that company or a related company and examine on oath such persons, who are bound to afford the inspectors all the assistance they require.

5. The result of an investigation will be presented to the appropriate Government body which may, in line with the findings of the report, institute prosecutions and bring actions on behalf of the company against officers, agents or third parties. It also contains powers to institute proceedings for the winding-up of the company.

H. Claims of Foreign Creditors and Recognition and Enforcement of Foreign Insolvency Orders

1. Foreign creditors are not discriminated in a Malaysian or Singapore Court in an insolvency. They are welcome to come in and prove in a liquidation or administration proceedings or to participate in a scheme of arrangement. They are in the same position as local creditors.

2. Their claims would be recognised and admitted in the same manner as a claim made by a local creditor. It would be comforting to note that there is no special priority regime in force for foreign creditors nor do they have to satisfy any special or additional rules.

3. The liquidator or the judicial manager/administrator, in order to establish the validity of the claim of the foreign creditor, would apply the law that governs the debt or claim under conflict of law principles (derived from England).

4. Where a company is in liquidation in Singapore or Malaysia, the following rules will apply:

- (i) for a company incorporated in Singapore, the insolvency law of Singapore claims jurisdiction over all assets beneficially owned by it wherever situate.
- (ii) for a foreign company registered in Singapore the insolvency law of Singapore claims jurisdiction only over assets within Singapore.
- (iii) for an unregistered companies, the insolvency law of Singapore claims jurisdiction only over assets within Singapore.

5. The position is similar in Malaysia. Both Malaysia and Singapore would apply the conflict rules and recognise the appointment of a foreign liquidator. As was indicated earlier this is specifically recognised in the Companies Act of both countries. A foreign liquidator is recognised though the High Court may appoint a local liquidator.

6. The parameters of the recognition of foreign insolvency has already been stated earlier in my paper. However monetary judgements from a superior court of record of a Commonwealth country can be registered in Singapore under the Reciprocal Enforcement of Commonwealth Judgements Act and enforced as a judgment of the Singapore courts. There is also the Reciprocal Enforcement of Foreign Judgments Act but todate it has not been extended to apply to any country. There is no such registration regime for foreign insolvency orders in Malaysia and Singapore.

7. In both Singapore and Malaysia, save for recognition of the status of a foreign liquidator appointed by the place of incorporation of a foreign company, there are no circumstances where Malaysia or Singapore law recognises or enforces foreign insolvency procedures or orders. Money judgments from other countries can be enforced by commencing a fresh action on the judgment in the Singapore courts.

8. Having said that, I would like to mention that foreign insolvency administrators are entitled to the same powers as a local insolvency administrator to claim, take control and realise the assets located in Malaysia and Singapore provided that the foreign insolvency administrator has been validly appointed under the laws of the country of incorporation of the insolvent company.

I. Conclusions

Cross-border insolvencies have taken a life of its own. The clutch of recent mega insolvencies having cross-border elements affecting multi-jurisdictions are here to stay. The downturn in the world economy and the likelihood of more of these cross-border insolvencies mean that there is pressure on the regulators in Malaysia and Singapore to make serious attempts to bring into the statute book of Singapore and Malaysia reciprocal cross-border provisions. UK and Australian reciprocal statutory provisions may form the basis of these arrangements. The other alterative is for both Singapore

and Malaysia to examine the UNCITRAL model on Cross-Border Insolvency approved by the United Nations in June 1997 and enact the terms of the model law with such modifications to suit local requirements

The current reciprocal provisions had its origins in the late 1940s and it is not only outdated, it is confined to personal bankruptcy. In both jurisdictions the time is ripe for a complete revamp of the legislative framework for insolvency laws.

Thank you.

C. Chandrasegar

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