Recent Developments

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JUDICIAL DISCRETION IN THE GRANT OF RELIEF IN RECOGNITION APPLICATIONS UNDER THE MODEL LAW

Kwan Kiat Sim*

In a recognition application under the UNCITRAL Model Law on Cross-border Insolvency (Model Law),[1] once the court recognises a foreign insolvency proceeding as a foreign main proceeding, certain automatic reliefs and orders follow. These include a stay of individual proceedings and execution against the debtor's property. On the other hand, for a foreign non-main proceeding, the recognising court exercises its discretion to decide the relief to be granted. What are the factors a recognising court can and should consider in exercising such discretion? How does the recognition of a foreign main or non-main proceeding affect the commencement or continuance of a winding-up proceeding before the recognising courts? This section discusses these issues against the backdrop of two decisions, one from Australia –Re Hydrodec Group plc[2] (Hydrodec) – and the other from the United Kingdom (UK) – Re Videology Ltd[3] (Videology).

HYDRODEC

Hydrodec Group plc (Hydrodec), a company incorporated in the United Kingdom, was also registered as a foreign company in Australia under the *Corporations Act 2001* (Cth).[4] One of Hydrodec's creditors commenced a winding-up proceeding against it in Australia. Hydrodec then applied for moratorium protection under the *United Kingdom Insolvency Act 1986*[5] (*Part A1 Moratorium*), under which Monitors were appointed.

Hydrodec subsequently applied in Australia under Arts 15 and 17 of the *Model Law* for recognition of the *Part A1 Moratorium* as a foreign main proceeding and for certain relief flowing from that. Hydrodec did not, however, seek recognition of the *Part A1 Moratorium* as a foreign non-main proceeding in the alternative. Instead, Hydrodec argued that, if the *Part A1 Moratorium* was not recognised as a foreign main proceeding, the winding-up proceeding should be stayed under s 581(2) of the *Corporations Act* or under common law.

The Supreme Court of New South Wales decided that Hydrodec's centre of main interests (COMI) was not the United Kingdom, and therefore the *Part A1 Moratorium* was not a foreign main proceeding. The court also declined to stay the winding-up proceeding, whether under the *Corporations Act* or common law.

Section 581(2) of the *Corporations Act* states that the Australian courts must "act in aid of, and be auxiliary to" courts in prescribed countries, which include the United Kingdom, on matters relating to winding up and insolvency. Case law holds that an Australian court is not obliged to stay a local winding-up proceeding merely because of the foreign insolvency process, but considers whether to exercise its discretion to order a stay in the circumstances.[6]

* Head, Restructuring & Insolvency Practice, Rajah & Tann Singapore LLP. The author wishes to thank Samantha Lim Si Ying, trainee at Rajah & Tann Singapore LLP, for research assistance.

[1] Unless stated otherwise, references in this article to the *UNCITRAL Model Law on Cross-border Insolvency* (*Model Law*) are to that adopted by Singapore – see Third Schedule to the *Singapore Insolvency, Restructuring and Dissolution Act 2018*.

[2] *Re Hydrodec Group plc* (2021) 152 ACSR 408; [2021] NSWSC 755.

[3] *Re Videology Ltd* [2018] EWHC 2186 (Ch).

[4] *Corporations Act 2001* (Cth).

[5] *Insolvency Act 1986* (UK) Pt A1.

[6] *Re Hydrodec Group plc* (2021) 152 ACSR 408, [158]; [2021] NSWSC 755.

The court considered the grounds which the Monitors relied on for the *Part A1 Moratorium*. In particular, the Monitors had given a statement that the *Part A1 Moratorium* would, in their view, result in the rescue of Hydrodec as a going concern. The Monitors explained that Hydrodec continued to negotiate with its lenders on a proposed refinancing. If the negotiations fail, Hydrodec proposed a share or asset sale in the group to raise funds to repay some of the debts. According to the Monitors, either a refinancing, or a share or asset sale, would result in a better recovery for creditors compared with a winding up.

In declining to stay the winding-up proceeding, the court was of the view that Hydrodec and the Monitors failed to provide sufficient detail or certainty of the proposed restructuring. Moreover, in the court's judgment, the Monitors needed but failed to demonstrate a "realistic prospect" of success of the proposed restructuring, either through a refinancing or a share or asset sale. The court added that there was no evidence of the terms of the refinancing or sale, or the likely attitude of creditors to such terms.

It has been persuasively argued that the decision in *Hydrodec* on s 581(2) of the *Corporations Act* is inconsistent with the *Model Law*, and may in fact be contrary to the public policy of Australia.[7] This article looks at the issue from a slightly different perspective. If Hydrodec had obtained recognition of the *Part A1 Moratorium* as a foreign non-main proceeding in the alternative, the recognising court would then exercise its discretion in the grant of relief under Art 21 of the *Model Law*. Before going further to examine the factors which a recognising court should consider, it is apposite to set out the key features and objectives of the recognition and relief regime under the *Model Law*.

Recognition and Relief under the Model Law

The *Model Law* focuses on certain foundational elements – *access* to local courts by foreign entities, *recognition* of foreign proceedings, *relief* to assist foreign proceedings, and *co-operation* among states and *co-ordination* of concurrent proceedings.[8]

One of the key objectives of the *Model Law* is to simplify and inject certainty into the recognition process for foreign insolvency proceedings. Once a recognition application is granted, the recognising court decides the relief necessary for the fair and orderly conduct of a cross-border insolvency. There are good reasons for there to be clear rules and requirements for a recognition application of a foreign proceeding. It benefits both the debtor and the other stakeholders, including creditors, employees and regulators, to know precisely how a debtor which is undergoing a foreign insolvency proceeding may seek and obtain recognition of the proceeding, and the consequences of such recognition.

As stated in the *Guide to Enactment*:[9]

> [T]he Model Law makes no provision for the receiving court to embark on a consideration of whether the foreign proceeding was correctly commenced under the applicable law; provided the proceeding satisfies the requirements of article 15 and article 6 [public policy] is not relevant, recognition should follow in accordance with article 17.

The grounds for refusal of recognition under the *Model Law* framework are carefully and deliberately circumscribed. Generally, recognition may be refused because of failure to comply with the requirements set out in the *Model Law*, public policy and possibly, abuse of process.[10]

Recognition of a foreign proceeding is a different issue from the relief to be ordered. Certain automatic reliefs follow the recognition of a foreign main proceeding,[11] whereas the relief to be granted for a foreign non-main proceeding is subject to the court's discretion.[12] Such relief includes a stay of individual legal

[7] Scott Atkins and Kai Luck, "Re Hydrodec Group [2021] NSWSC 755 [case comment]" 30 Int Insolv Rev (2021) 460 (Re Hydrodec Case Comment).

[8] *Guide to Enactment and Interpretation of the UNCITRAL Model Law on Cross-border Insolvency* (2014) [24] (*Guide to Enactment*).

[9] *Guide to Enactment*, n 8, [151] (see also [150]).

[10] *Guide to Enactment*, n 8, [161].

[11] *Model Law*, n 1, Art 20.

[12] *Model Law*, n 1, Art 21.

proceedings and execution against the debtor's property. Certain categories of rights, such as secured and set-off rights, are not affected by a stay ordered by the recognising court.[13]

It is well established that the relief granted by the recognising courts is based on similar relief available under the law of the recognising state. As the court remarked in *Re Senvion GmbH (No 2)*[14] in the context of a foreign main proceeding, "once recognition has been granted, the task is to identify the relevant parts of the *Corporations Act* to be deemed to apply for the purposes of a Article 20 stay". The court's role is to identify an appropriate comparator in local legislation to effect similar relief. The court "is not given a discretionary power under s 16 of the Act to make bespoke modifications to the stay arising by operation of law upon recognition".[15]

The Singapore High Court in *Re Rooftop Group International Pte Ltd*[16] also highlighted that, when exercising its discretion on the relief to be ordered for a foreign non-main proceeding, the "general inclination is to grant such orders to assist the foreign representative in the performance of her functions to the same degree and extent as would be granted to a local insolvency representative". Such inclination would be displaced "where factors point to the need to address any overriding interests within the jurisdiction, such as possible societal concerns or employee rights, for instance",[17] particularly because "care should be taken to avoid giving unnecessarily broad powers to the foreign representative of a foreign non-main proceeding which may interfere with the administration of another insolvency proceeding, particularly a main proceeding, elsewhere".[18]

In addition, the *Model Law* states that a recognising court may order an entrustment of the debtor's property located in the recognising state to a foreign representative, provided the court is satisfied that the interests of local creditors are adequately protected.[19] Similarly, the court must ensure that the interests of creditors, including secured creditors, and the debtor, are adequately protected in the grant of relief under Art 19 (interim relief before hearing of the recognition application) and Art 21 (foreign non-main proceeding) of the *Model Law*.[20] In granting relief to a foreign representative of a non-main proceeding, such relief must relate to property that should be administered in the foreign non-main proceeding or concerns information required in that proceeding.[21] By setting out the clear parameters of the consequences of a recognition application, the *Model Law* provides predictability and transparency to the recognition process and the relief which flows from it.[22]

Understandably, the factors mentioned so far in considering the grant of relief do not include the merits of the foreign insolvency proceeding, particularly, whether the requirements under foreign law for the foreign court order, such as an interim moratorium, have been met. Each jurisdiction has and applies its own laws on what a debtor needs to establish to obtain interim relief and protection within the jurisdiction in support of a proposed debt restructuring.

For instance, the Singapore High Court in *Re IM Skaugen SE*[23] stated that, where a moratorium applicant in Singapore intends to propose a compromise or arrangement but has not yet done so, it

[13] *Model Law*, n 1, Art 20(3), (4) and (5).

[14] *Re Senvion GmbH (No 2)* (2019) 140 ACSR 20, [27]; [2019] FCA 1732.

[15] *Re Senvion GmbH (No 2)* (2019) 140 ACSR 20, [29]; [2019] FCA 1732. See also *Re King* [2018] FCA 1932 and *Re Edelsten* (2014) 320 ALR 506; [2014] FCA 1112.

[16] *Re Rooftop Group International Pte Ltd* [2020] 4 SLR 680, [26].

[17] *Re Rooftop Group International Pte Ltd* [2020] 4 SLR 680, [26].

[18] *Re Rooftop Group International Pte Ltd* [2020] 4 SLR 680, [28].

[19] *Model Law*, n 1, Art 21(2).

[20] *Model Law*, n 1, Art 22(1).

[21] *Model Law*, n 1, Art 21(3).

[22] *Guide to Enactment*, n 8, [29].

[23] *Re IM Skaugen SE* [2019] 3 SLR 979, [48]–[49].

must, among other things, "show both creditor support and the importance of the same",[24] and provide "a brief description of the intended compromise or arrangement".[25] Under English law, a precondition for an *Part A1 moratorium* is the proposed monitor's statement that, in his or her view, it is likely that a moratorium will result in the rescue of the debtor as a going concern. In contrast, there is no similar requirement under Australia's small business restructuring process (introduced in Pt 5.3B of the *Corporations Act*).[26]

There may be certain broad commonalities on the requirements for court protection or moratorium relief in support of a proposed debt restructuring in different jurisdictions, such as a minimum level of disclosure by the debtor and an outline of the restructuring plan. However, it is up to each jurisdiction to determine its own requisite threshold requirements, and whether they have been met is to be decided under the law of that particular jurisdiction.

The court in *Hydrodec* did not consider whether the requirements under English law for a *Part A1 moratorium* have been met. In declining to stay the winding-up proceeding, the court explained it placed "little weight" on the Monitors' opinions supporting the Moratorium because they failed to "engage with the question whether there is any *realistic prospect* of either the refinancing or sale being achieved in circumstances where this has not occurred despite the Company's efforts since at least late 2019".[27] The court seems to suggest there is a threshold requirement (absent under English law) on the prospects of a successful proceeding, which must be met before the court grants relief in the recognition of the foreign insolvency proceeding.

Had the debtor sought recognition of the *Part A1 Moratorium* as a foreign non-main proceeding, the court would have likely refused to grant the requested moratorium relief under Art 21 of the *Model Law*. Relief under Art 21 is subject to the court's discretion, and the court may well rely on the same reasons for declining to stay the winding-up proceedings under s 581(2) of the *Corporations Act*. Ultimately, what may have weighed on the court's mind was the suspicion of certain potentially voidable transactions and insolvent trading claims. On these facts, it may have been imperative to carry out investigations under a liquidation regime as soon as possible.[28]

The reasoning in *Hydrodec* may be juxtaposed against that of the English High Court in *Videology*.

VIDEOLOGY

Videology Ltd, a UK incorporated company, was part of a corporate group. The group's parent company, Videology Inc, as well as Videology Ltd, filed voluntary petitions under Ch 11 of the *United States Bankruptcy Code* in the US Bankruptcy Court for the District of Delaware. Videology Ltd then applied to the English High Court for recognition of the US Ch 11 proceeding as a foreign main proceeding, and in the alternative as a non-main proceeding, with moratorium relief against insolvency proceedings in the United Kingdom.

After determining that the COMI of Videology Ltd was in the United Kingdom, rather than the United States (US),[29] and that the US Ch 11 proceeding was a foreign non-main proceeding, the court explained[30] the context which informs the exercise of discretion whether to grant relief under Art 21 of the *Model Law*. First, the fact that the applicant's COMI was in the United Kingdom generally means that the main insolvency proceedings should have been conducted in the United Kingdom, and thus there should be very good reasons to restrict or prohibit creditors in the United Kingdom from seeking to commence main insolvency proceedings in United Kingdom. In particular, the court was of the view that foreign

[24] *Insolvency, Restructuring and Dissolution Act 2018* (Singapore) s 64(4)(a).

[25] *Insolvency, Restructuring and Dissolution Act 2018* (Singapore) s 64(4)(b).

[26] As noted in Re Hydrodec Case Comment, n 7, 466.

[27] *Re Hydrodec Group plc* (2021) 152 ACSR 408, [164]; [2021] NSWSC 755 (emphasis added).

[28] *Re Hydrodec Group plc* (2021) 152 ACSR 408, [170]; [2021] NSWSC 755.

[29] *Re Videology Ltd* [2018] EWHC 2186 (Ch), [74].

[30] *Re Videology Ltd* [2018] EWHC 2186 (Ch), [85].

non-main proceedings would not be conducted in accordance with the laws that creditors might have anticipated would govern the insolvency given the COMI of the debtor in the United Kingdom. Further, the foreign insolvency proceedings would not be under the control of the English courts or under the supervision of a UK regulated insolvency practitioner. It would also be more difficult for creditors based in the United Kingdom to effectively participate in the foreign proceedings.

Thus, the court in *Videology* reasoned,[31] in granting recognition to a foreign non-main proceeding, there must be "obvious benefits" to the (local) creditors as a whole, coupled with appropriate protections for creditors who would otherwise be entitled to participate in main insolvency proceedings in the COMI (the United Kingdom). It seems that the requirement for obvious benefits to creditors is extrapolated from the nature of a foreign non-main proceeding. Nonetheless, such a requirement is consistent with the protection of creditors' interests in the grant of relief, and reflects the primacy of a foreign main proceeding and the subsidiary role of a foreign non-main proceeding under the *Model Law* regime.[32]

The court then carried out a fairly detailed analysis of the proposed restructuring plan in the US Ch 11 process. The court observed that, based on the evidence, a sale of the business under a Ch 11 proceeding would yield better returns for creditors as compared to a piecemeal sale of the company's affairs in United Kingdom.[33] A coordinated sale, by itself, would not have justified moratorium relief in the United Kingdom since an administrator appointed in the United Kingdom could have facilitated that same sale process. However, the court noted that the US Ch 11 process was at an advanced stage and the appointment of administrators might result in additional cost and time. It was not necessary to appoint administrators to give voice to the unsecured creditors given the role and composition of the unsecured creditors' committee in the United States.

The court focused on protecting the interests of the creditors in the United Kingdom by, among other things, ensuring an appropriate allocation of costs and the subsequent division of the net proceeds of the sale between the parent company in the United States and the applicant in the United Kingdom, and that the UK creditors would be properly represented in the Ch 11 process. The court was satisfied that could be achieved on the facts. Finally, there was no objection, but in fact support, from the UK creditors for the recognition application and the relief sought. In the circumstances, the English court recognised the Ch 11 proceeding as a foreign non-main proceeding for the applicant and imposed a moratorium to restrain insolvency proceedings in the United Kingdom without leave of court.

Hydrodec and *Videology* are similar in the sense that both courts carefully reviewed the evidence on the proposed restructuring, including its status, terms and potential recovery to creditors, in deciding whether to grant relief in aid of a foreign insolvency proceeding. The factors relevant to the exercise of discretion in the grant of relief were clearly (and rightly) not confined to public policy and the express requirements under the *Model Law*. There is nevertheless an important difference between the reasoning in the two decisions. In *Videology*, the recognising court focused on the interests of the local creditors and how they can be best protected if relief is granted, rather than imposing or substituting its own test on the prospect of a successful restructuring, which appears to be what the court in *Hydrodec* did. The court in *Hydrodec* was probably motivated by a similar overriding concern – granting relief to support a restructuring with no realistic prospect of success is not in the interests of creditors. However, if there is no requirement under English law for the debtor to prove a *realistic prospect* of the restructuring in order to obtain the *Part A1 Moratorium*, it is difficult for a recognising court to justify imposing such a requirement. There is no support for doing so under the *Model Law*.

It is true that Art 21 of the *Model Law* itself allows the recognising court to exercise discretion in the grant of relief, and does not expressly limit the factors that a recognising court can consider. Yet it should not extend to imposing a requirement based on the recognising court's perception of the prospect of a successful restructuring. Doing so directly or indirectly questions whether the foreign proceeding was

[31] *Re Videology Ltd* [2018] EWHC 2186 (Ch), [86]. The court relied on Art 21(2) of the *Model Law* on this point.

[32] *Guide to Enactment*, n 8, [193].

[33] *Re Videology Ltd* [2018] EWHC 2186 (Ch), [87]–[89].

correctly commenced in the first place, and results in unwarranted and considerable uncertainty for both the debtor and the creditors in a recognition application.

LOCAL INSOLVENCY PROCEEDINGS

In both *Hydrodec* and *Videology*, the debtor company tried to stay a local winding-up proceeding as part of the relief for its recognition application. Linked to the issue of how a recognising court exercises discretion in the grant of relief is whether the commencement of a local insolvency proceeding should be permitted, notwithstanding recognition of the foreign proceeding.

It is erroneous to assume that recognition of a foreign main or non-main proceeding, by itself, prohibits the commencement of a local insolvency proceeding (whether for a winding up or a judicial management or administration). Article 20(5) of the *Model Law* states that the stay which automatically arises upon recognition of a foreign main proceeding "does not affect the *right* to request or otherwise initiate the commencement of a proceeding under [Singapore] insolvency law or the right to file claims in such a proceeding".[34]

Upon recognition of a foreign proceeding, particularly one for debt restructuring, and with the automatic relief in Art 20 in place, it may seem counterintuitive to allow a creditor to commence an insolvency proceeding in the recognising jurisdiction. The *Guide to Enactment* does not explain precisely how the recognition of a foreign main (or non-main) proceeding interacts with a local insolvency proceeding,[35] except to say that the automatic stay does not prevent anyone, including the foreign representative and foreign creditors, from requesting the commencement of a local insolvency proceeding and from participating in that proceeding. The *Guide to Enactment* then refers to Arts 11–13 and 29 of the *Model Law*, which largely deal with co-ordination of foreign and local proceedings.

The *Digest of Case law on the UNCITRAL Model Law on Cross-border Insolvency (2021)* (*Digest of Case Law*), referring to Art 20 para 4 (Art 20(5) in Singapore) of the *Model Law*, states as follows:

> [M]ultiple proceedings should be the exception, although the commencement of a plenary proceeding in the receiving State in accordance with Article 20(4), may be appropriate, notwithstanding recognition of foreign proceedings, where creditors could demonstrate there was a need for additional protection.[36]

This suggests it is for the creditor who wishes to commence a local insolvency proceeding to explain the need for concurrent proceedings. A review of two decisions gives colour to this issue.

In *Re Tradex Swiss AG*,[37] Swiss regulators commenced bankruptcy proceedings against a Swiss company in Switzerland primarily to investigate potential irregularities and wrongdoing. The Swiss foreign representative appointed under the Swiss process applied to the US courts for its recognition as a foreign main proceeding, and applied to dismiss an existing involuntary Ch 7 petition[38] in the United States against the company. The court rejected the dismissal application. The court considered[39] that the Swiss proceeding was pending appeal, and the Ch 7 administrator had already begun the collection of the company's assets. As such, the court was of the view that dismissal of the Ch 7 petition was "not warranted as the purposes of Chapter 15 are best served by permitting the Chapter 7 to go forward". Further, a large number of creditors were in the United States.

Section 305(b) of the *US Bankruptcy Code* allows a foreign representative to seek dismissal of an involuntary proceeding if (1) a petition for recognition under Ch 15 has been granted, and (2) the purposes of the Chapter 15 recognition would be best served by such dismissal. It seems that s 305(b) places the

[34] It follows that such a right should not be affected in the recognition of a foreign non-main proceeding (emphasis added).

[35] *Guide to Enactment*, n 8, [188].

[36] See *Digest of Case law on the UNCITRAL Model Law on Cross-border Insolvency (2021)* 62 [12] (*Digest of Case Law*). *Millennium Global Emerging Credit Master Fund Ltd*, 458 BR 63, 82 (Bankr SDNY, 2011) was cited at fn 28 of the *Digest of Case Law* for this proposition, but based on the reported decision that does not seem to be the main holding.

[37] *Re Tradex Swiss AG*, 384 BR 34, 44 (Bankr D Mass, 2008).

[38] *US Bankruptcy Code* Ch 7 governs the liquidation, as opposed to reorganisation, of a debtor.

[39] *Re Tradex Swiss AG*, 384 BR 34, [15] (Bankr D Mass, 2008).

burden on the foreign representative to show why the involuntary petition should be dismissed, and it will be allowed to continue if he fails to discharge his burden.

The court's decision in *Re Tradex Swiss AG* was not surprising. The Swiss proceeding was not aimed at restructuring the debts of the company but to investigative potential wrongdoing. In fact, based on the grounds of decision, there was no evidence how the Ch 7 petition would cause any prejudice to the Swiss proceeding, let alone how its recognition would be best served by the dismissal of the Ch 7 petition. The objectives of both the Swiss and US proceedings in the conduct of investigations and collection of assets may well be broadly aligned, and the key is in co-ordinating both proceedings to meet such objectives.

Videology is a more apposite example of the tension between recognition of a foreign proceeding and local insolvency proceedings. On whether to restrain the commencement of insolvency proceedings in the United Kingdom, the court said:[40]

> The extension of that moratorium to the prohibition of collective insolvency proceedings in the UK is not automatic, even where the foreign proceedings are recognised as foreign main proceedings under Article 20: see Article 20(5) of the Model Law. However, where the foreign proceedings are *debtor-in-possession proceedings* under which the debtor's management will continue to exercise management functions in relation to the debtor's business whilst its affairs are restructured, particular difficulties might arise and unnecessary costs might well be incurred if the management were treated as having been displaced by administrators or liquidators in relation to dealings with any of the business and assets in the UK. (emphasis added)

In the court's judgment, the correct balance is to disallow local winding-up proceedings against the debtor in the United Kingdom unless with leave of court.[41] It is not an absolute bar, but the court exercises control and supervision over the process.

Just because the automatic stay under Art 20 of the *Model Law* does not prohibit the commencement of local insolvency proceedings does not mean that such proceedings *should* be commenced or allowed to continue. This is particularly so where the foreign proceeding is part of a debtor-in-possession restructuring. In such cases, the appointment of a liquidator or judicial manager – even one who displaces management control only for the debtor's affairs in the recognising jurisdiction – may not cohere with the regime under the foreign restructuring process. In such circumstances, it is correct for the recognising courts to require good reasons (or using the words in *Videology*, an obvious purpose[42]) for the commencement or continuation of a local insolvency proceeding which displaces the current management.

There would be good reasons to do so when, for example, the purpose of the foreign proceeding is to collect or gather assets, to investigate wrongdoing (as in *Re Tradex Swiss AG*), or to preserve the status quo. As a general point, the courts should be slow to allow a creditor to commence or continue a concurrent local insolvency proceeding if it would not be in the interests of the restructuring process as a whole. In addition to the concerns noted by the court in *Videology*, the commencement of such proceedings may trigger cross defaults in the debtor's contracts,[43] and should not be deployed purely to exert undue pressure on the debtor. In the absence of legislation providing otherwise,[44] a creditor who wishes to commence or continue a local insolvency proceeding, notwithstanding the recognition of a foreign proceeding for a debtor-led restructuring, should bear the burden of demonstrating good reasons (or an obvious purpose) for doing so.

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[40] *Re Videology Ltd* [2018] EWHC 2186 (Ch), [83].

[41] *Re Videology Ltd* [2018] EWHC 2186 (Ch), [100].

[42] *Re Videology Ltd* [2018] EWHC 2186 (Ch), [83].

[43] If possible, the debtor may try to rely on legislation restricting the operation of *ipso facto* clauses, such as *Insolvency, Restructuring and Dissolution Act 2018* (Singapore) s 440 in Singapore, or in Australia, *Corporations Act 2001* (Cth) ss 415D, 434J and 451E.

[44] Such as *US Bankruptcy Code* s 305(b).

CONCLUSION

The *Digest of Case Law* observes that "Article 21 has been described by some courts as providing a very broad reservoir of power that enables courts to grant any appropriate relief to effectuate the purpose of the [Model Law] and to protect the assets of the debtor or the interests of the creditors".[45] Faced with what appears to be opposing concerns of the debtor and creditors, a recognising court may sometimes be inclined to the view that it either has to grant or refuse relief entirely. However, it is open to the recognising court to tailor or customise the relief as appropriate,[46] for instance, ordering a limited stay of local insolvency proceedings subject to conditions. That may be a better way of addressing creditors' concerns in formulating the relief in a recognition application, instead of refusing relief on grounds which may find little support in the *Model Law*.

[45] *Digest of Case Law*, n 36, 66 [3].

[46] *Model Law*, n 1, Art 22(2) and (3).