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The Rules of Court 2021 ('ROC 2021') entered into force on 1 April 2022. Among other things, ROC 2021 reformed the rules on service out of jurisdiction (previously discussed here). Order 8 rule 1 provides:

'(1) An originating process or other court document may be served out of Singapore with the Court's approval if it can be shown that the Court has the jurisdiction or is the appropriate court to hear the action.

…

(3) The Court's approval is not required if service out of Singapore is allowed under a contract between the parties.

…'

A handful of decisions on the application of Order 8 rule 1 have since been delivered; two are discussed in this post. One of them considers the 'appropriate court' ground for service out of jurisdiction provided in Order 8 rule 1(1) and touches on the location of cryptoassets; the other is on Order 8 rule 1(3).

Service out under the 'appropriate court' ground

Cheong Jun Yoong v Three Arrows Capital[1] involved service out of jurisdiction pursuant to the 'appropriate court' ground in Order 8 rule 1(1). As detailed in the accompanying Supreme Court Practice Directions ('SCPD'), a claimant making an application under this ground has to establish the usual common law requirements that:

'(a) there is a good arguable case that there is a sufficient nexus to Singapore;

(b) Singapore is *forum conveniens*; and

(c) there is a serious issue to be tried on the merits of the claim.'[2]

For step (a), the previous Order 11 gateways have been transcribed as a non-exhaustive list of factors.[3] This objective of this reform was to render it 'unnecessary for a claimant to scrutinise the long list of permissible cases set out in the existing Rules in the hope of fitting into one or more descriptions.'[4] As *Three Arrows* illustrates though, old habits die hard and the limits of the 'non-exhaustive' nature of the jurisdictional gateways remains to be tested by litigants. The wide-reaching effect of a previous Court of Appeal decision on the interpretation of gateway (n) which covers a claim brought under statutes dealing with serious crimes such as corruption and dug trafficking and 'any other written law' is also yet to be grasped by litigants.[5]

In *Three Arrows*, the first defendant ('defendant') was a British Virgin Islands incorporated company (BVI) which was an investment fund trading and dealing in cryptocurrency. It was under liquidation proceedings in the BVI; its two liquidators were the second and third defendants in the Singapore proceedings. The BVI liquidation proceedings were recognised as a 'foreign main proceeding' in Singapore pursuant to the UNCITRAL Model Law on Cross-Border Insolvency as enacted under Singapore law.[6] The claimant managed what he alleged was an independent fund called the 'DC Fund' which used the infrastructure and platform of the defendant and its related entities. After the defendant decided to relocate its operations to Dubai, the claimant incorporated Singapore companies to take over the operations and assets of the DC Fund. Not all of the assets had been transferred to these new companies at the time the defendant went into liquidation. The claimant's case was that the DC Fund assets remaining with the defendant were held on trust by the defendant for the claimant and other investors in the DC Fund and were not subject to the BVI liquidation proceedings. The Liquidators in turn sought orders from the BVI court that those assets were owned by the defendant and subject to the BVI Liquidation proceedings.

The claimant relied on three gateways for service out of jurisdiction: gateway (a) where relief is sought against a defendant who is, inter alia, ordinarily resident or carrying on business in Singapore; gateway (i) where the claim is made to assert, declare or determine proprietary rights in or over movable property situated in Singapore; and gateway (p) where the claim is founded on a cause of action arising in Singapore.

On gateway (a), the defendant was originally based in Singapore before shifting operations to Dubai a few months before the commencement of the BVI Liquidation proceedings. The claimant attempted to argue that residence for the purposes of gateway (a) had to be assessed at the time when the company was 'alive and flourishing'.[7] This was rightly rejected by the court, which observed that satisfaction of the gateway depended on the situation which existed at the time application for service out of jurisdiction was filed or heard. On gateway (p), it was held that there was a good arguable case that the cause of action arose in Singapore because the trusts arose pursuant to the independent fund arrangement between the parties which was negotiated and concluded in Singapore. All material events pursuant to the arrangement took place when the defendant was still based in Singapore and the defendant's investment manager was a Singapore company.

It is perhaps the court's analysis of gateway (i) which is of particular interest as it deals with a nascent area of law. Are cryptocurrencies 'property' and if so, where are they located?

The court confirmed earlier Singapore decisions that cryptocurrencies are property.[8] It held:

'Given the fact that a cryptoasset has no physical presence and exists as a record in a network of computers …. It best manifests itself through the exercise of control over it.'[9]

Between a choice of the identifying the *situs* as the domicile or residence of the person who controls the private key linked to the cryptoasset, the court preferred residence as being the 'better indicator of where the control is being exercised.'[10] Seemingly drawing from the position in relation to debts, one of the reasons for preferring residence was that this was where the controller can be sued.[11] The court was also concerned that there may be difficulties in identifying domicile.[12] On the facts, the controller was one of the Singapore incorporated companies set up by the claimant and the claimant was in turn the sole shareholder of that company. Both the company and claimant were resident in Singapore and thus gateway (i) was satisfied.

On the other requirements for service out with permission of the court under the 'appropriate court' ground, the court was persuaded that there was a serious

issue to be tried on the merits and that connecting factors indicated Singapore was *forum conveniens*. The defendants' application to set aside the order granting permission to serve out of jurisdiction and to set aside service of process on them thus failed. The Appellate Division of the Singapore High Court has recently refused permission to appeal against the first instance decision.[13]

It bears pointing out that the same issue of ownership of the assets of the DC Funds was before the BVI court in the insolvency proceedings. The first instance court was unmoved by the existence of parallel proceedings in the BVI, as the BVI proceedings were at a very early stage and hence were not a significant factor in the analysis on *forum conveniens*.[14] However, as mentioned above, the BVI insolvency proceedings had been recognised as a 'foreign main proceeding' by the Singapore court. Under Article 21 of the UNCITRAL Model Law on Cross-Border Insolvency, relief granted pursuant to such recognition can include staying actions concerning the 'debtor's property'.[15] While the very issue in the Singapore action is whether the assets of the DC Funds are indeed the 'debtor's property',[16] staying the action will clearly be in line with the kinds of relief envisaged under Article 21. Under the Model Law, the issue of *forum conveniens* should take a back seat as the emphasis is on cross-border cooperation to achieve an optimal result for all parties involved in an international insolvency.

Service out pursuant to a contractual agreement

In *NW Corp Pte Ltd v HK Petroleum Enterprises Cooperation Ltd*,[17] the contract between the claimant and defendant, who were Singapore and Hong Kong-incorporated companies respectively, contained this clause:

'This Agreement shall be governed by and construed in accordance with the English law [sic]. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by Singapore court [sic] without recourse to arbitration and to service of process by registered mail …'

The claimant served process on the defendant in Hong Kong by way of registered post to the defendant's last known address and purportedly pursuant to Order 8 rule 1(3) ROC 2021. The issue whether the service was validly effected arose when the defendant sought to set aside the default judgment that was subsequently approved by the Singapore High Court Registry. The defendant

argued that Order 8 rule 1(3) required that the agreement name not only a method of service but also specify a location out of Singapore where service could take place. The Assistant Registrar ('AR') disagreed, holding that this would be too narrow an interpretation of Order 8 rule 1(3). Pointing to the more relaxed modes of service permitted under the ROC 2021[18] in comparison with the predecessor ROC 2014,[19] the AR stated that there was no suggestion in Order 8 rule 1(3) or in the definitions provided elsewhere which suggested that both method and place of service had to be specified in a jurisdiction clause in order for a claimant to avail itself of service out without permission of the court. The AR was of the view that an agreement could come within Order 8 rule 1(3) so long as it provided for service of originating process of the Singapore courts on a foreign defendant.

The reasoning was as follows. First, Order 8 rule 1(3) was a deviation from the orthodox principles that the Singapore court's jurisdiction was territorial in nature and service on a defendant abroad ordinarily required permission of court. If a foreign defendant agreed that jurisdiction of the court can be founded over them by way of service of originating process, that service necessarily included service out of Singapore. Thus, to come within Order 8 rule1(3), the agreement merely required the foreign defendant to consent to the jurisdiction of the court to be founded over them by way of service of originating process. Secondly, the phrase used in Order 8 rule 1(3) was service 'out' of Singapore, rather than service 'outside' Singapore. Only the latter phrase, in the AR's view, connoted that service of process at a location other than Singapore was required.

On the first rationale, the Singapore court's *in personam* jurisdiction over a defendant is founded on service of process.[20] This is the case ordinarily, with or without the defendant's agreement. If the defendant expressly agrees that this can be done, this could be used to counter a subsequent challenge by the defendant to the existence of jurisdiction of the Singapore court, but it is difficult to see how, without more, an agreement to accept service of Singapore process takes the defendant outside the orthodox territorial framework of the Singapore court's jurisdiction. Surely only the defendant's agreement to service of Singapore process abroad, rather than merely agreement to service of Singapore process, would provide justification for the deviation from orthodox principles? The AR seemed to be suggesting that it is implicit that a foreign defendant, by agreeing to accept service of Singapore process, also consents to service of

process out of Singapore, but the second rationale proffered renders any implicit agreement moot as, on the AR's view, Order 8 rule 1(3) does not require the defendant to agree to accept service abroad. However, the legal difference between 'out' and 'outside' is elusive, as 'service out of jurisdiction' is uncontroversially understood to refer to service on a defendant who is abroad and thus not within the territorial jurisdiction of the court.

A parallel provision to Order 8 rule 1(3) can be found in the Singapore International Commercial Court Rules 2021 ('SICC Rules'). Permission of the SICC is likewise not required where the defendant is party to a 'written jurisdiction agreement' for the SICC or 'service out of Singapore is allowed under an agreement between the parties.'[21] Order 8 rule 1(3) is missing the first option. However, it would be unlikely for the parties to have agreed on 'service out of Singapore' without first having agreed on a Singapore choice of court agreement. Despite this slight oddity, the intention of the drafters is clearly to liberalise the service out(side) of jurisdiction rules. Whether the intention was to liberalise it as much as was held in *NW Corp* is, however, debatable.

[1] [2024] SGHC 21.

[2] SCPD 2021 para 63(2).

[3] SCPD 2021 para 63(3).

[4] Civil Justice Commission Report, Chapter 6, p 16 (29 December 2017).

[5] *Li Shengwu v Attorney-General* [2019] 1 SLR 1081 (CA). The point is explained here.

[6] Insolvency, Restructuring and Dissolution Act 2018 s 252 and Third Schedule.

[7] [2024] SGHC 21 [46].

[8] *CLM v CLN* [2022] 5 SLR 273; *Bybit Fintech Ltd v Ho Kai Xin* [2023] 5 SLR 1748.

[9] [2024] SGHC 21 [60]

[10] [2024] SGHC 21 [63].

[11] [2024] SGHC 21 [63].

[12] [2024] SGHC 21 [63].

[13] *Three Arrows Capital Ltd v Cheong Jun Yoong* [2024] SGHC(A) 10.

[14] [2024] SGHC 21 [82].

[15] Insolvency, Restructuring and Dissolution Act 2018, Third Schedule, Art 21(1)(a).

[16] The respondent was clearly the legal owner; the question was whether the assets belonged beneficially to the applicant.

[17] [2023] SGHCR 22.

[18] ROC 2021 O7 r2(1)(d).

[19] ROC 2014 O10 r3.

[20] Supreme Court of Judicature Act 1969 s16(1)(a). The court also has jurisdiction if the defendant had submitted to the jurisdiction of the court (s16(1)(b)), but submission is normally used to counter a jurisdictional objection by the defendant; in the ordinary course of things, service of process must first take place.

[21] SICC Rules 2021 O5 r6(2).