



Singapore Apex Court recognises BVI as the COMI of a BVI registered company – an examination of article 16(3) of the Model Law

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In *Re Fullerton Capital Limited (in liquidation)* [2025] SGCA 11, the Singapore Court of Appeal has affirmed the importance of a debtor's registered office (in this case in the BVI) as its centre of main interests ("COMI"). The Court of Appeal considered (a) the operation of the presumption of a debtor's COMI under the UNCITRAL Model Law on Cross-Border Insolvency 1997 (the "**Model Law**") which has the force of law in Singapore pursuant to the Insolvency, Restructuring and Dissolution Act 2018 (2020 Rev Ed) (the "**SG Model Law**"); and (b) the relevant timing for assessing a debtor's COMI.

Facts

Fullerton, the respondent company, was put into insolvent liquidation on 12 October 2022 by order of the BVI court and the liquidators were appointed ("**BVI Liquidation**"). Its registered office was in the BVI.

The striking feature of this case was the sheer paucity of evidence on Fullerton's commercial activities. Fullerton had only been involved in a *single* business transaction. It had contracted with a company, ostensibly based in Hong Kong, which had then commenced a fraudulent claim against Fullerton in the Singapore courts.

Fullerton's liquidators applied to the Singapore courts to have the BVI Liquidation recognised as a foreign main proceeding, and sought disclosure and examination orders against the relevant persons, including (a) Fullerton's current and former directors; (b) the appellant (a former director and shareholder of Fullerton) and Fullerton's former employee; (c) financial institutions that had provided banking and financial services to Fullerton; and (d) Fullerton's former solicitors. The appellant argued that Fullerton's COMI was in China, Hong Kong or Singapore.

Although the appellant also relied on the public policy ground to argue that the liquidators acted in bad faith or failure to make full and frank disclosure of material facts, the Singapore Court of Appeal held that the public policy ground was not engaged.

The analysis of the Singapore Court of Appeal on the issue of COMI is set out below.

Presumption applies even if company has no commercial activity

In an ordinary case where the debtor's registered office is known, article 16(3) of the SG Model Law would apply as the starting point. There is a rebuttable presumption that the debtor's COMI is at the place of its registered office.

Having confirmed that it was obliged to apply the presumption, what then did the court make of the fact that Fullerton had not carried on any activities in the BVI?

The court observed that a lack of evidence that the debtor carries out any activities at the place of its registered office does not allow it to disapply the presumption. However, the presumption is more easily rebuttable by evidence that the debtor conducts administration of its interests in a different place from that of its registered office.

The burden of proving the place of a debtor's COMI rests on whichever party asserts that it is at a different place from the debtor's registered office. The party bearing the burden should not be setting out to prove a negative (i.e., that the registered office is *not* the COMI) but a positive (i.e., that a different jurisdiction *is* the COMI).

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Relevant time for determining COMI

While the case law had consistently affirmed that the time for assessing a debtor's COMI was the time of the filing of the application for recognition, it was also said that the court's focus nonetheless ought to be on the debtor's position prior to the commencement of the foreign proceeding and the appointment of the debtor's foreign representatives, i.e. the liquidators.

In this case, having confirmed that the time for assessing a debtor's COMI was the time of the filing of the application for recognition, the Court of Appeal also expressed the view that all factors had to come into play. If a foreign representative's activities had been undertaken over a long period of time, they should not be artificially excluded from the COMI analysis. Instead, the court would take a measured approach of placing historical facts on a sliding scale of relevance, such that their weight may be calibrated based on their relevance to the issue of the debtor's COMI at the relevant time.

Application

On the facts, there was no evidence that the appellant could marshal to rebut the presumption that BVI was Fullerton's COMI and support a finding that the COMI is China, Hong Kong or Singapore. The court declined to give any weight to the factors submitted by the appellant for reasons set out below.

- Location of Fullerton's control and direction: It was appropriate to look to Fullerton's foreign representatives (who had been appointed since 2022) rather than any of Fullerton's past directors as the persons having control and direction of Fullerton. Fullerton had not engaged in any business activities since restoration other than the ongoing administration of the BVI Liquidation. Given this, it was unrealistic to assess Fullerton's control and direction at the relevant time by considering any person other than the foreign representatives.
- Location of Fullerton's creditors: There was however insufficient evidence to find that the creditor was indeed based in Hong Kong.
- Location of Fullerton's operations: There was insufficient evidence of Fullerton's operations as most of the indicators relied on by the appellant were disputed and, in any event, did not pull clearly towards any particular jurisdiction.

Commentary

It is not unusual for a BVI company to have little to no commercial transactions during its lifetime. In cases where none of the usual COMI factors comes close to establishing anything resembling a meaningful connection with any jurisdiction, the Model Law provides a simple yet elegant solution in the form of a presumption in favour of the debtor's registered office.

The Singapore Court of Appeal's guidance on the robust framework provided by the SG Model Law is welcomed. It has demonstrated the Singapore's court's willingness to recognise and assist BVI court appointed liquidators, specifically by granting the relief requested by the liquidators in the form of disclosure and examination orders.

The judgment also reinforces that position that substantive insolvency proceedings could be commenced in the BVI (which is not a Model Law jurisdiction) and the liquidators would still be able to seek Model Law recognition elsewhere, such as Singapore.



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