Singapore and Malaysia Announce Protocols for Court-to-Court Cooperation in Cross-Border Insolvency and Shipping

Introduction

Commercial transactions and disputes are increasingly likely to contain a cross-border element. As such, the ability of Courts to cooperate on the management of proceedings that span their respective jurisdictions will facilitate the efficient resolution of cross-border issues. In this regard, the Singapore and Malaysia Courts have demonstrated a commitment to judicial cooperation between the two countries.

On 5 October 2021, the Supreme Court of Singapore and the Federal Court of Malaysia announced the implementation of Protocols on Court-to-Court communication and cooperation in Admiralty, Shipping and Cross-Border Insolvency matters ("Protocols"). The Protocols put in place a framework for cooperation and communication between the two Courts to facilitate the efficient and timely coordination and administration of prescribed types of cases.

In line with cooperation between the Courts, the effective management of cross-border disputes involving Singapore and Malaysia would also be greatly facilitated by the collaboration between counsel in both jurisdictions. In this regard, Rajah & Tann Singapore LLP and Christopher & Lee Ong, as members of the Rajah & Tann Asia Network operating in Singapore and Malaysia respectively, are well placed to help jointly navigate the waters of the transnational dispute resolution process.

In this Update, we highlight the key features of the Protocols and how they impact cross-border commercial disputes.

Scope of Protocols

The Protocols provide a framework for any of the Superior Courts of Malaysia and the Supreme Court of Singapore to communicate and cooperate in specific types of matters.

The Protocol on cross-border corporate insolvency matters applies to the following types of proceedings commenced in Malaysia and Singapore (or other similar processes as are available in Malaysia and Singapore):
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(a) Winding up;
(b) Judicial management;
(c) Schemes of arrangement for debt restructuring; or
(d) Receivership in the context of corporate insolvency.

The Protocol on related admiralty and shipping matters applies to the following types of proceedings commenced in Malaysia and Singapore:

(a) Proceedings involving claims coming within the admiralty jurisdiction of either Court;
(b) *In rem* proceedings that involve the arrest of the same vessel, including the release or judicial sale in Malaysia or Singapore; or
(c) Proceedings that arise out of the same casualty and which involve parties to an existing limitation action in Malaysia or Singapore.

**Court-to-Court Communication and Cooperation**

The Protocols set out the procedures on how the Courts of Malaysia and Singapore may establish communication in the relevant areas. The key features are highlighted below.

**Initiation of communication** – Under the Protocols, each Court may initiate a request for court-to-court communication with the foreign Court concerning the cases listed above. The foreign Court may respond directly to the request and engage in court-to-court communication, the method of which will depend on the agreement by the two Courts.

**Disputant participation** – Parties before each Court will be notified of each request for court-to-court communication. However, the parties will not be permitted to participate in such communication unless the agreement of the Courts is obtained.

**Confidentiality** – The confidentiality of any documents, information and other data exchanged in court-to-court communication will be maintained, unless already in the public domain. The documents, information, and other data exchanged will only be used for the purposes and objectives of the Protocol concerned.

**Concluding Words**

The Protocols are a welcome development. We see in the Protocols certain key elements and features of the Judicial Insolvency Network (JIN) (more information on which can be found [here](#)), a network of insolvency judges around the world, which focuses on cross-border insolvency matters.
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The Protocols target matters in the pertinent areas of Cross-Border Insolvency, as well as Admiralty and Shipping. Disputes in these areas are likely to involve separate jurisdictions and are potentially complex. Different parties and stakeholders may be involved in the different jurisdictions and each jurisdiction may have its own unique considerations and circumstances. Court-to-court communication protocols provide a platform for each party to better understand and consider another party's position, and hopefully facilitate a holistic resolution of issues.

Parties with queries in the prescribed areas involving Singapore and Malaysia may feel free to contact our respective teams at Rajah & Tann Singapore LLP and Christopher & Lee Ong.
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