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Universal Succession in Singapore – Getting the Recognition It Deserves

The doctrine of universal succession has finally received judicial recognition in Singapore, almost 60 years after the leading English case on the subject was decided.

The doctrine of universal succession has, for the first time, been considered – and approved – by the Singapore courts in *JX Holdings Inc and another v Singapore Airlines Ltd* [2016] SGHC 212 (JX Holdings). Prior to this judgment, practitioners in Singapore placed reliance on the English position in concluding that the Singapore courts are *likely* to follow English common law principles when examining the doctrine of universal succession.

The JX Holdings judgment now puts this beyond doubt and suggests that the Singapore courts may be prepared to recognise succession even (i) where it may not be recognised under English law and (ii) where the succession is not "universal".

The Facts

JX Holdings centred on a seemingly simple question: where a foreign entity (**X**) succeeds to all the rights and liabilities of another foreign entity (**Y**) pursuant to corporate action which (under the laws of their jurisdiction of incorporation) deems X to be the successor of all of Y's rights and obligations, who should be registered as the owner of shares which were originally owned by Y?

A secondary issue was whether stamp duty would be payable on such a transmission (as opposed to a "transfer") of such shares.

Judicial Commissioner Edmund Leow found, in relation to the main issue, that X should be registered as the holder of the shares in question, and directed that the secondary issue (relating to the payment of stamp duty) be determined by the Inland Revenue Authority of Singapore.

A Considered Decision

In arriving at its decision, the High Court found it necessary to undertake a detailed analysis of the doctrine of universal succession, and noted that this appeared to be the first case in which the principle had been discussed in Singapore[1].

The court described the doctrine of universal succession as follows:

> "In broad terms, this doctrine holds that where the law of incorporation recognises a succession of corporate personality from one corporate entity to another, then the law of the forum will recognise not just the changed *status* of the company, but also the fact that the successor has inherited the rights and liabilities of its predecessor." (emphasis in original)

The judgment went on to examine various decisions from England and other parts of the Commonwealth citing, with approval, the decision of the House of Lords in *National Bank of Greece and Athens SA v Metliss* [1957] AC 509 (**Metliss**) – the leading case on the subject. In the Singapore court's opinion, it was both "logical and just" that Metliss decided that:

> "…the succession of corporate personality is a matter which goes to the *status* of the foreign corporation and is therefore governed by the law of incorporation. As far as the law of the forum is concerned, once an entity is recognised as having the *status* of a universal successor, then it will be clothed with *both* the assets and liabilities of its predecessor(s)." (emphasis in original)

Following an exposition of Metliss and subsequent cases on the topic, the court summarised the propositions from the cases as follows, and recommended their adoption in

[1] The issue does appear to have been touched on (albeit tangentially) in *Shafeeg bin Salim Talib and another (administrators of the estate of Obeidillah bin Salim bin Talib, deceased) v Helmi bin Ali bin Salim bin Talib and others* [2009] SGHC 180, where the Singapore High Court cited (with approval) a paragraph from Dicey, Morris & Collins' *The Conflict of Laws*, 13th edition (2000), which referred specifically to universal succession.

Singapore (certain conclusions which were specific to the case at hand and not relevant to this briefing have been excluded):

> "(a) […]
>
> (b) If the legal issue is one which concerns the status of a foreign corporation, this will fall to be decided according to the law of incorporation. The status of the foreign corporation as it exists in its law of incorporation will be recognised in our courts out of comity.
>
> (c) In some cases, the law of incorporation might recognise that an entity has the status of a "universal successor". What is usually meant by this is that the entity is seen as having inherited the legal personality of another company, with the attendant consequence that it inherits all the assets and liabilities of its predecessor. This process does not necessarily entail that there is a continuity of legal personality between the old and new entities; the process can be discontinuous, but the "essence of the transaction" is that the new entity has taken on either the whole or a part of both the assets and liabilities of its predecessor(s).
>
> (d) […]
>
> (e) Succession can be found even though the succeeding entity inherits only a part, rather than the whole of the patrimony of the original entity, as long as this is the position in the law of incorporation and the intent was nevertheless that the newly created entity would be the successor to that part of the assets and liabilities it received.
>
> (f) Succession extends not just to the ownership of assets and liabilities. It can, in some cases, even mean the uninterrupted continuation of pending arbitration proceedings, subject to such notice requirements as might be required by the law of the forum: see *Eurosteel Ltd v Stinnes AG* [2000] 1 All ER (Comm) 964."

The court gave two reasons for recommending the adoption of the above propositions:

1. first, the key principle underpinning the doctrine of universal succession is that of international comity, which the Singapore courts have placed great emphasis on; and
2. second, the Singapore courts have long recognised that matters relating to substantive company law, including the authority of agents to bind companies, and matters relating to internal management, fall to be governed by the law of the place of incorporation. The court found that it would, accordingly, be consistent with this to recognise that the law of the place of incorporation can also bring about a succession of corporate personality, and recognise the attendant change in the ownership of assets and liabilities.

Evolving from the English law position

JX Holdings is notable in that it departs from the English law position in two respects, indicating that the Singapore courts may be prepared to recognise succession more readily than the English courts.

Under English law, it is generally accepted that, in relation to a merger of non-English established corporations under a non-English law, English law would recognise the consequences of "universal succession", subject to the satisfaction of the following criteria:

1. the merger is undertaken in conformity with the laws governing the merging entities;
2. there must be a complete transfer, by operation of law, of all the rights, assets and liabilities of the entity which is to be dissolved to the surviving entity pursuant to the merger; and
3. the absorbed entity must cease to exist. Any continued existence, even for only a short period, of the former entity may call into doubt the effectiveness of the succession under English law.

While upholding the principle that the merger must be recognised under the laws of the jurisdiction of incorporation of the relevant entities, Leow JC's conclusion that:

> "succession can be found even though the succeeding entity inherits only a part, rather than the whole of the patrimony of the original entity, as long as this is the position in the law of incorporation and the intent was nevertheless that the newly created entity would be the successor to that part of the assets and liabilities it received"

allows for a broader recognition of succession, even where the succession does not take place on a one-to-one basis (i.e. it is not a single successor entity which succeeds to all the rights and liabilities of the predecessor entity, and multiple successors could potentially succeed to the rights and liabilities of the successor where, for example, the business of the predecessor is being split.)

Additionally, the court cited *Centro Latino Americano de Commercio Exterior SA v Owners of the Ship "Kommunar" (The "Kommunar" (No 2))* [1997] 1 Lloyd's Rep 8 as (possibly) suggesting that:

> "the doctrine of universal succession can also apply even if the former entity continues to exist after it has given up its assets and liabilities."

This, of course, runs contrary to the English law position that the absorbed entity must cease to exist for a universal succession to be recognised under English law.

While the court did not make a firm pronouncement on this latter point, it provides an indication that the Singapore courts may be willing to take a more purposive approach towards determining whether to recognise a succession in Singapore – even where it may not be recognised under English law.

Conclusion

JX Holdings is a welcome decision. It confirms what practitioners had generally believed to be the case: that the doctrine of universal succession applies in Singapore. It also indicates that recognition of the doctrine in Singapore is evolving from the English law position, and that the Singapore courts may be prepared to take a more commercially minded view of the succession, having regard to the purpose which the foreign succession seeks to achieve.

With all the uncertainties that the previous position presented, JX Holdings provides non-Singaporean companies who may be seeking to undertake mergers by succession in their home jurisdictions with comfort that (i) such actions will be recognised in Singapore and (ii) from a Singapore law perspective, the obligations and rights of the original entity will be recognised as moving across to the succeeding entity.

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