IN THE GENERAL DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2022] SGHC 196

Originating Application No 381 of 2022

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Company Limited

… *Applicant*

Originating Application No 382 of 2022

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Pte Ltd

… *Applicant*

Originating Application No 383 of 2022

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Asia Pte Ltd

… *Applicant*

Originating Application No 384 of 2022

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Australia Pty Ltd

… *Applicant*

Originating Application No 385 of 2022

In the Matter of Section 64 of the Insolvency, Restructuring and Dissolution Act 2018

Zipmex Exchange Indonesia

… *Applicant*

BRIEF GROUNDS

[Insolvency Law — Moratoria]
[Insolvency Law — Cross-border insolvency]

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Aedit Abdullah J:

1 These are my brief remarks capturing my decision granting an extension of the moratoria operating in favour of the applicants. The focus of these remarks will be on the jurisdiction of the Court over the applicants which are foreign companies, which turns on the existence of a substantial connection to Singapore. It is hoped that the publication of these remarks will assist counsel and practitioners in this area, and that it will also clarify to the account holders abroad what is happening in these Singapore proceedings.

2 A recording of the hearing for this case has been uploaded to YouTube, though, because of an error, the video footage was not recorded, and only the audio was captured. The recording may be accessed at the following address: https://www.youtube.com/watch?v=Exo9cAqfjHM. A full recording was uploaded of a separate moratoria application relating to another crypto company, Defi Payments Pte Ltd ("Defi"), which may be accessed at the

following link: https://www.youtube.com/watch?v=HH1pd8d0GOM. These efforts were made primarily to address the needs of the large number of creditors who are account holders in these various entities, most of whom are situated outside Singapore, and who may not have been able to attend the open court proceedings, even online.

Background

3 The applications were made by companies in the Zipmex Group: Zipmex Asia Pte Ltd (the group holding company incorporated in Singapore, "Zipmex Asia"), Zipmex Pte Ltd (a Singapore subsidiary, "Zipmex Singapore"), Zipmex Company Limited ("Zipmex Thailand"), Zipmex Australia Pty Ltd ("Zipmex Australia") and PT Zipmex Exchange Indonesia ("Zipmex Indonesia"). The group operates a cryptocurrency exchange platform, which is accessed through the Zipmex App, on which various cryptocurrencies are traded. The various country entities were apparently established to comply with local market regulations.

4 A registered customer gains access to the Zipmex App and a "trade wallet". The trade wallet contains a "fiat wallet", into which they deposit fiat currency, *ie*, national currencies, which can be used to buy cryptocurrencies. These cryptocurrencies are known as "On-Exchange Assets", and are stored in a "hosted wallet", which is also part of the "trade wallet". The cryptocurrencies can be kept in another wallet outside of the Zipmex App or withdrawn. For customers registered with Zipmex Singapore, Zipmex Australia, and Zipmex Indonesia, once fiat currency is converted to a crypto asset or a crypto asset is deposited into the "hosted wallet", the ownership of the said asset is transferred to each respective entity. These assets may be used by the entities, such as to

pledge, re-pledge, hypothecate, *etc*, as it sees fit for its own purposes. For Zipmex Thailand, the assets are held on a custodial basis.

5 Yet another wallet, the "Z wallet" is used for the ZipUp+ service ("ZipUp+"), which is subject to separate terms and conditions. ZipUp+ is offered to all users. Apart from Zipmex Thailand, the remaining entities offer their local customers access to ZipUp+, which is run by the respective entities. For Zipmex Thailand, Thailand-based customers use the service through Zipmex Singapore. ZipUp+ allows existing customers to deposit crypto assets held in their "hosted wallet" (which is held in their "trade wallet") into the "Z wallet", in return for various benefits. Upon transfer of the crypto assets from the "hosted wallet" to the "Z wallet", the crypto assets cease to be governed by the terms and conditions of each specific entity. Instead, they are governed by the terms and conditions of ZipUp+. Under these terms, the assets in the "Z wallet" are held by Zipmex Asia (which is incorporated in Singapore), *ie*, at a group level, in an aggregated hot wallet (*ie*, a wallet connected online rather than one kept offline, or "cold"). Essentially, this allows the Zipmex Group to make use of the cryptocurrencies.

6 All of the crypto assets, whether deposited in the various "Z wallets" (hosted by Zipmex Australia, Zipmex Indonesia, and Zipmex Singapore) or in the "hosted wallet", are held in a wallet which is hosted by Zipmex Asia. Zipmex Asia has the right to utilise these assets and deploy them to third parties, such as crypto exchanges or crypto asset management companies. As for the fiat currencies, which are deposited into the "fiat wallet" (which is a part of the "trade wallet"), they are held on a custodial basis for the customers, and are held in omnibus accounts created and maintained with banks in each of the subsidiary entities' names.

Section 64 and 65 applications in summary

7 As noted in *Re IM Skaugen SE and other matters* [2019] 3 SLR 979 ("*IM Skaugen*"), the precursor to s 64 of the Insolvency, Restructuring and Dissolution Act 2018 ("Act"), namely s 211B of the Companies Act (Cap 50, 2006 Rev Ed) ("Companies Act"), introduced the moratoria regime, to allow a company in difficulties breathing space to put together a rescue plan, avoiding a scramble among creditors to liquidate the company: [41] of *IM Skaugen*, citing the second reading of the Companies (Amendment) Bill 2017 (*Singapore Parliamentary Debates, Official Report* (10 March 2017) Vol 94). The trade-off for the moratorium or suspension of proceedings against the company is showing that there is support from creditors, and an undertaking or promise by the company to put forward a rescue plan or proposal: s 64(4) of the Act. The cases interpreting s 211B of the Companies Act continue to be applicable to s 64 of the Act. *IM Skaugen*, in particular, gives guidance on the approach to be taken. Where a company intends to propose a compromise or arrangement, evidence of creditor support for the moratorium had to be shown, requiring on a broad assessment that there was reasonable prospect of the intended compromise or arrangement working and being acceptable to the general run of creditors. The Court does not take a vote at this time, but takes a broad assessment bearing in mind the quality of creditor support, particularly from significant or crucial creditors: [48]–[58] of *IM Skaugen*. The Court in s 64 proceedings cannot determine the merits of claims or order the applicant to pay them off.

8 Section 65 of the Act extends the protection of the moratoria by an applicant under s 64 to subsidiaries, holding companies or ultimate holding companies, where such related companies play a necessary and integral role in the proposed compromise or arrangement being considered in the application

under s 64. In gist, the objective is to protect integral parts of the group to ensure the success of the restructuring effort.

The applications

9 I was satisfied that the requirements under ss 64 and 65 of the Act were met by the respective applicants. In particular, there was sufficient indication that the proposed scheme would work and be acceptable to the general run of creditors. However, I was of the view that a five-month moratoria extension would not be appropriate, and instead allowed an approximately three-month extension for each of the applications, so that the Court could monitor progress and engagement. The Court did indicate for the benefit of the possible investors that further extensions could be granted if matters were in order.

10 It should also be noted that, as empowered by ss 64(5)(*b*) and 65(4)(*b*) of the Act, the moratoria operate against the acts of a person in Singapore or within the jurisdiction of the Court regardless of whether that act occurs in Singapore or elsewhere.

11 While much of the application did not throw up substantial issues, I was of the view that the establishment of substantial connection merited separate submissions, which I consider below. I also consider it opportune in these remarks to highlight a few considerations for future applications.

Substantial connection – jurisdiction over entities

12 Sections 64 and 65 of the Act govern moratoria of proceedings against a company and its subsidiaries and holding companies. Section 63 includes within the term "company", any corporation liable to be wound up under the Act. Section 246(1) provides that an unregistered company, which is a foreign

company, may be wound up only if it has a substantial connection. Such substantial connection may be established by a number of factors including that Singapore is the centre of main interests of the company: s 246(3) of the Act.

13 The concept of the centre of main interests (also known as "COMI") has been considered in Singapore primarily in the context of recognition of foreign proceedings, where COMI is used in the UNCITRAL Model Law, as implemented in Singapore through s 252(1) of the Act: *Re Zetta Jet Pte Ltd and others (Asia Aviation Holdings Pte Ltd, intervener)* [2019] 4 SLR 1343 ("*Re Zetta Jet*"). In *Re Opti-Medix Ltd (in liquidation) and another matter* [2016] 4 SLR 312 ("*Opti-Medix*"), I considered that a common law notion of COMI could be introduced and used in common-law recognition*, ie,* recognition outside the operation of the UNCITAL Model law.

14 I am satisfied that there is no reason to differentiate between the use of COMI in different contexts, *ie*, recognition of proceedings under the Model Law, winding-up under the Act and protection of restructuring *via* moratoria through ss 64 and 65 of the Act. I did not see anything that would indicate any such intention on the part of Parliament, in its adoption of the term outside the context of the Model Law. Nor would there be any reason in principle for such differentiation: COMI is a useful concept in identifying the jurisdiction with the closest and most tangible or impactful connection to a company.

15 In *Zetta Jet*, a number of observations were made about the determination of COMI:

(a) What COMI factors are objectively ascertainable by potential creditors is a material consideration: [76] of *Zetta Jet*.

(b) What weight would be given by such a creditor to a particular factor: [78] of *Zetta Jet*.

(c) The focus is on the practical, with activities on the ground being more important than the legal structure: [82] of *Zetta Jet*.

(d) The factors should have an element of settled or intended permanence: [79] of *Zetta Jet*.

(e) Ultimately, the court considers on a robust basis, where, on balance, the centre of gravity of the material factors is located: [80] of *Zetta Jet*.

16 The applicants relied on Singapore being their COMI being established for each of them through their business structure and interlinked operations. Reliance was placed on Singapore being the hub of the business, with each of the subsidiary applicants being established to comply with local regulations. For the Thai customers, the use of the "Z wallet" (which provides additional benefits) was through Zipmex Singapore. This allowed the assets to be dealt with by Zipmex Singapore. All the "On-exchange Assets", *ie*, the crypto assets, are held in a hot wallet hosted by Zipmex Asia, with each of the subsidiaries giving Zipmex Asia the authority to effectively trade or commit these assets for business purposes. Thus for the individual entities, Singapore was the COMI because:

(a) In respect of Zipmex Thailand, the management and operations of the company are made in Singapore, and a large majority of the assets are credited to Zipmex Singapore because of the ZipUp+ facility.

(b) Similar factors point to Singapore in respect of Zipmex Indonesia and Australia with strong indications of support in favour of the restructuring in Singapore.

17 I determined that the COMI was Singapore, and that this gave substantial connection, allowing the Court to exercise its ss 64 and 65 jurisdiction under the Act.

18 The consolidation of assets in the hot wallet hosted by Zipmex Asia in Singapore, from all the entities, lay at the bottom of the business model and operations of the group. While not all the creditors may have actually been aware of this, the fact that such consolidation occurred does point to a Singapore centre of gravity.

19 I did note that in the present case, while there would be some creditors who would have, in depositing their cryptocurrency with Zipmex Thailand, put store by the cryptocurrencies being held in Thailand, there were clearly those who were happy to have the benefits of the upscaled account in the form of the ZipUp+. Those accounts would have involved contracts with Zipmex Singapore. I also noted that there were complaints that there was not enough notified to the account holders about what the ZipUp+ account would entail, and there was not much choice given. However, the analysis from a COMI perspective was not what specific creditors would have known or done, but what would have been evident to a creditor before extending credit. Thus, the fact that some creditors did not know of the Singapore connection would not affect the analysis.

20 As for direction and control, these did point to a Singapore focus, but I would note that its strength would be less than that in cases such as *Zetta Jet*,

where the fact that management and direction was largely centred in the US as opposed to Singapore would be more readily apparent to creditors and other observers.

21 Taking a holistic assessment of these various factors, therefore, given the location of the ultimate use of the assets through the hot wallet, the use of the ZipUp+ facility, and the locus of management in Singapore, the COMI for each of the entities was Singapore. Specifically for the Thai entity, the preponderance of the use of the ZipUp+ facility and the hot wallet was significant.

Substantial connection on other grounds

22 The applicants put forward an alternative argument, that the factors above also established a substantial connection aside from their COMI being in Singapore, citing *Re Pacific Andes Resources Development Ltd and other matters* [2018] 5 SLR 125 ("*Pacific Andes*"). The applicants point in particular, that for Zipmex Indonesia and Zipmex Australia, substantial assets were, with the consent of their customers, held by Zipmex Asia. It is argued that the *lex situs* of the assets is Singapore. As for Zipmex Thailand, a large proportion of the assets are held in Zipmex Singapore because of the management of the assets held through the ZipUp+ accounts. Additionally, the applicants rely on the business of the group being centred in Singapore, with Singapore being the nerve centre, and the focus of the investments.

23 I accept that these factors would operate to establish, aside from COMI, substantial connection to Singapore, which would be sufficient to give the Court jurisdiction under ss 64 and 65 of the Act. This is not however the appropriate case for the court to explicate further on what counts as substantial connection

under s 246(3) of the Act, given the absence of contrary submissions here. I would only reiterate what I noted in *Re PT MNC Investama TBK* [2020] SGHC 149 at [13], that there should be activities of some permanence or permanent effect, and that transient activities would be excluded. Here, in particular, the holding of a large proportion of the assets, whatever their nature, in Singapore, is a substantial connection. Added to that is the management and direction of the group as a whole being concentrated here. I have not determined the *lex situs* of the assets, nor do I assume that these assets have a *lex situs*: the resolution of the precise nature of cryptocurrencies in an insolvency case in Singapore is left for another day.

24 I note that in *Pacific Andes* there was some discussion whether the factors went to discretion or jurisdiction. It did not make a difference there, ultimately. In the present case, given the language of ss 64, 65 and 246 of the Act, I would think that these matters would now go to jurisdiction, but again, not much difference, if any, results.

Townhall / Engagement / Creditor Committees / Independent advisors

25 I would highlight, for the benefit of potential applicants dealing not just with crypto assets, but with large numbers of unrepresented creditors, that engagement is important, and would be under scrutiny by the courts when an application for extension is made. What follows is not a checklist: what may be needed will vary from case to case, but applicants should seriously consider each of them, and be prepared to answer to the court why a particular form of engagement is not being used.

26 Applicants should ensure proper communication and engagement, perhaps through the use of townhalls. At a minimum, facilities should be

provided for dissemination of information, electronically or otherwise. It will not be an answer to point to large numbers: the applicant would have had the benefit of a large customer base, and cannot seek to hide behind numbers when things come to grief. Similarly, translations of documents should be provided wherever feasible. Explanations of how s 64 of the Act works, possible investments and the likely timelines should also be given. I would also note that the website of the Singapore Courts provided a simplified overview of s 64 of the Act for the benefit of creditors in the present application by way of an information note. The note may be accessed at the following address: https://www.judiciary.gov.sg/news-and-resources/news/news-details/information-note-on-zipmex-entities-hearing-on-15-august-2022.

27 Serious thought should be given to the establishment of creditor committees. A framework for selection and representation ought to be explored. It is important to give voice to the creditors. If feasible, independent legal and financial advisors should be appointed and their remuneration provided for. These advisors should be focused on the needs of unrepresented creditors in navigating the process in obtaining a moratorium under s 64 of the Act, which together with any scheme application under s 210 of the Companies Act 1967, may take a while to come to a landing.

28 At the very least, the appointment of a financial advisor by the applicant, as is being pursued here, would be helpful.

29 I have no doubt that there may be other mechanisms that may be helpful, and would encourage applicants to consider what is done in other jurisdictions. The objective is to provide timely communications, and to assist the creditors in understanding what is happening, and to have some voice in the process.

30 The court for its part will consider what can be done to facilitate access to hearings. The use of the Zoom webinar system for the present application as well as in the Defi application, is one such measure, as is the uploading of the recordings on YouTube. It is likely, subject to specific needs, that similar cases will continue to be held in open court in this way. While the court will endeavour to accommodate large numbers of creditors as best as it can, there will be limits on resources available, so it may not always be possible to do so. Nonetheless, the court will continue to consider what may be done in appropriate situations.

Conclusion

31 The applications were accordingly allowed, with extensions granted until 2 December 2022. Directions were given for various matters to be pursued by the applicants, including the holding of town halls and exploration of the establishment of creditor committees, especially for Thailand.

Aedit Abdullah
Judge of the High Court

Daniel Chia Hsiung Wen, Tang Yuan Jonathan, Wong Ru Ping Jeanette and Kuek Ying Ching Chrystle (Morgan Lewis Stamford LLC) for the applicants.