The Singapore Court may grant freezing injunctions in aid of foreign court proceedings, but the Court must have jurisdiction over the defendant, and a substantive claim must nevertheless be brought against the defendant in Singapore.

In *Bi Xiaoqiong v China Medical Technologies, Inc (in liquidation) and another* [2019] SGCA 50 ("China Medical"), the Singapore Court of Appeal ("CoA") confirmed that the Singapore Court may grant freezing (or Mareva) injunctions in support of foreign court proceedings. However, the Singapore Court must have jurisdiction over the defendant whose assets are targeted, and a substantive claim must still be brought against the defendant in Singapore, even if that claim is stayed in favour of the foreign proceedings. The CoA's decision dismisses a conflicting line of past authorities which suggested that a Mareva injunction could never be obtained in aid of foreign court proceedings, on the basis that the Court's power to grant interlocutory relief is intended to support domestic court proceedings only.

**The facts of the case**

China Medical Technologies is a company incorporated in the Cayman Islands. It was founded and led by Mr Wu Xiaodong until it went into liquidation on 27 July 2012.

In 2007-2008, China Medical Technologies and its subsidiary CMED Technologies Ltd (together, "CMT") entered into two transactions to acquire medical technology from Supreme Well Investments Limited ("SW") for a total cash consideration of approximately USD 520 million ("Transactions"). After investigating the affairs of CMT, the liquidators considered that CMT’s management had procured the Transactions fraudulently, including because the medical technology which CMT acquired from SW was worthless.

The liquidators further discovered that after the Transactions, through a series of payments, SW transferred significant amounts of the Transaction proceeds to individuals who were either part of or had links to management of CMT, including Mr Wu himself and his then-wife, Ms Bi Xiaoqiong.

CMT therefore had grounds to pursue a case against its former management as well as various recipients of the funds in respect of the fraudulent Transactions. They also sought injunctions against the management and various recipients of funds to prevent the dissipation of assets.
The procedural steps taken by the liquidators

In Hong Kong
CMT (via the liquidators) first commenced proceedings in 2013 against four individuals including Mr Wu claiming breach of fiduciary duties, breach of trust, conspiracy, knowing receipt, and money had and received in respect of four specific payments from CMT to SW.

In December 2016, CMT commenced a second set of proceedings in Hong Kong against 23 defendants including Mr Wu and Ms Bi, alleging similar claims but in relation to a much broader group of transactions. CMT’s intention was eventually to apply to consolidate both sets of proceedings in Hong Kong.

In December 2017, after discovering certain facts suggesting that the defendants’ assets were at risk of dissipation, CMT applied for and obtained from the Hong Kong High Court a worldwide Mareva injunction against, among others, Mr Wu and Ms Bi (the “HK Injunction”). The HK Injunction restrained Ms Bi from disposing of or dealing with her assets worldwide up to a total value of USD 17.6 million (the amount she allegedly received).

In Singapore
In December 2017, CMT commenced proceedings in Singapore against Mr Wu and Ms Bi setting out substantially the same claims as those advanced in the Hong Kong proceedings. At the same time, CMT sought a Mareva injunction restraining Mr Wu and Ms Bi from disposing of or dealing with their assets in Singapore (the “SG Injunction”).

On February 2018, CMT applied to stay the substantive proceedings in Singapore pending the outcome of the Hong Kong proceedings, on the basis that Hong Kong was the most convenient forum (the “Stay Application”).

Only Ms Bi challenged the SG Injunction before the Singapore Court. Her primary position was that the Singapore Court had no power to grant a Mareva injunction purely in aid of foreign court proceedings, and that it is a prerequisite to the exercise of the Court’s power to grant interlocutory relief, that the substantive proceedings in Singapore would result in a judgment.

The Court of Appeal’s decision
The CoA rejected Ms Bi’s appeal and upheld the SG Injunction. It also granted the Stay Application. The CoA held that the Singapore Court had the power to grant the SG Injunction. The source of the Court’s power is section 4(10) of the Civil Law Act (Cap 43) (the “CLA”), which provides that:

“A Mandatory Order or an injunction may be granted or a receiver appointed by an interlocutory order of the court… in all cases in which it appears to the court to be just or convenient that such order should be made.”
The CoA held that pursuant to section 4(10), the Court could grant injunctions in aid of foreign court proceedings, subject to two principal conditions:

- the Court must have *in personam* jurisdiction against the defendant (the “Jurisdiction requirement”); and
- the plaintiff must have a reasonable accrued cause of action against the defendant in Singapore (the “Cause of Action requirement”).

The CoA’s endorsement of the Jurisdiction and Cause of Action requirements is consistent with longstanding English authorities on the then-English equivalents to section 4(10) of the CLA. The Court’s power to grant injunctions under section 4(10) does not exist in isolation, but is intended to be ancillary to (and exercised in aid of) the enforcement of a substantive right before it. Therefore, the Court cannot grant an injunction purely in aid of foreign court proceedings, without any substantive local proceedings on foot.

However, and overruling a divergent line of past judicial authorities, the CoA further held that so long as the Jurisdiction and Cause of Action requirements were met, it was not necessary that the proceedings in Singapore must result in a judgment on the substantive issues in dispute (the “Forum requirement”). In principle, it does not matter that the plaintiff seeks to stay the proceedings it has brought in Singapore in favour of foreign court proceedings, since the Singapore Court would still retain a ‘residual’ jurisdiction over the parties. The Court had the power to grant an injunction based on this residual jurisdiction, and the plaintiff’s purpose – in seeking the injunction in favour of foreign court proceedings – was thus not strictly relevant to the analysis.

**A welcome clarification**

The CoA’s decision provides welcome clarification on the scope of injunctive relief in favour of foreign court proceedings. The CoA itself acknowledged that its interpretation of the Court’s powers pursuant to section 4(10) of the CLA is consistent with the needs of modern international litigation. The relative ease with which individuals, particularly perpetrators of international fraud, may now move assets internationally means that the assets of a defendant must often be secured in several jurisdictions simultaneously (given the risk of dissipation), even if the substantive dispute is only litigated in one jurisdiction. Such interim relief is now clearly available in Singapore, so long as the Jurisdiction and Cause of Action requirements can be met.

Other jurisdictions have addressed the need for such ancillary relief directly by way of legislative intervention. In England and Hong Kong, for example, updated laws have conferred upon the courts the direct power to grant injunctions and other ancillary relief in aid of foreign court proceedings, without the need for substantive proceedings to be brought at the same time.

Such legislation is not in place in Singapore except in respect of international commercial arbitration – pursuant to the International Arbitration Act, the Singapore Courts have the express power to grant interim relief (including injunctive relief) in aid of foreign arbitrations, although the Court may decline to do so if the fact that the arbitration is seated abroad makes it
“inappropriate” to grant interim relief. It remains anomalous that no such express power exists in respect of foreign court proceedings. In this context, the need to meet threshold Jurisdiction and Cause of Action requirements might still create difficulties for a plaintiff seeking injunctive relief in Singapore in aid of foreign court proceedings.

The facts of China Medical itself were straightforward in that Ms Bi, the only target of the SG Injunction who challenged it, was a Singaporean national and the Court clearly had jurisdiction over her on that basis. But what if an injunction is sought over a foreign defendant who has assets in Singapore?

> In those circumstances, in order to meet the Jurisdiction requirement, the plaintiff would usually require the Court’s leave to serve the foreign defendant out of the jurisdiction.

> While the existence of assets in Singapore is one ground for service out of the jurisdiction (Order 11 rule 1(a) of the Rules of Court), the Court must also be satisfied that the case is a “proper one for service out of Singapore” (Order 11 rule 2(2) of the Rules of Court).

> As to the latter requirement, in the context of substantive proceedings the courts have traditionally applied the Spiliada test to assess whether the case is a proper one for service – the plaintiff must show that Singapore is the convenient forum before the Court would permit the service of proceedings out of jurisdiction. Therefore, in such cases even if the Forum requirement is not directly relevant to the Court’s decision to grant an injunction (following the CoA’s decision in China Medical), the plaintiff may nevertheless still need to show that Singapore is the convenient forum to satisfy the threshold Jurisdiction requirement.

> If the Spiliada test must be met, then it would be difficult to obtain a Mareva injunction against a foreign individual with assets in Singapore in support of foreign court proceedings, since Singapore would naturally not be the convenient forum to resolve the underlying dispute.

It remains to be seen if the Singapore Courts will be prepared to relax the Spiliada requirement, where a plaintiff seeks leave to serve substantive proceedings out of the jurisdiction solely for purposes of obtaining an injunction in support of foreign court proceedings. The text of Order 11 rule 2(2) does not itself impose the Spiliada requirement and relaxing that requirement would also be in line with the needs of international litigation today. However, there are first instance authorities (decided before the China Medical decision) to the effect that the Court would not exercise its jurisdiction in such cases if the Spiliada test cannot be met (see PT Gunung Madu Plantations v Muhammad Jimmy Goh Mashun [2018] 4 SLR). In the absence of updated legislation, this issue may well invite further clarification from the appellate courts in future.
Practical considerations

Establishing a cause of action in Singapore: A plaintiff seeking an injunction in Singapore in support of foreign court proceedings must always ensure that it brings substantive proceedings against the relevant defendants at the same time, even if it would be accompanied by a stay application. It would make sense if the defendants to the Singapore proceedings are also defendants to the primary, foreign proceedings.

Establishing jurisdiction in Singapore: Establishing the Singapore Court’s jurisdiction would be straightforward if the defendants are Singaporean nationals or corporates. If the defendants are outside of Singapore, in light of potential difficulties with meeting the Jurisdiction requirement (see above) the plaintiff may consider:

> whether it could structure the litigation such that the substantive dispute is litigated in Singapore. This approach may be helpful if there are enough links to make Singapore the convenient forum, and if necessary accompanying injunctions can be obtained in foreign jurisdictions with laws in place that expressly permit their courts to grant injunctions in aid of foreign court proceedings; or

> whether jurisdiction can be established via other means. If the assets are held via Singapore nominees, the plaintiff may consider if a direct cause of action can be asserted against them, so that the substantive cause of action and supporting injunctions can be directed at them.

A clear rationale about the need for Singapore proceedings: In *China Medical* the CoA opined that, while the plaintiff’s purpose in seeking an injunction is irrelevant to the existence of the Court’s power to grant it, if the plaintiff had no real intention to pursue the substantive action in Singapore, but only sought a free-standing injunction, the Court may nevertheless refuse to grant the injunction on grounds that the Singapore proceedings were brought for a collateral purpose (tantamount to an abuse of process). However, the Court accepted that in this case, the plaintiff reserved the right to pursue the Singapore proceedings after the foreign main proceedings were concluded, and that this purpose was legitimate. The plaintiff should therefore (at least) take care not to make any statements to the effect that it has no intention to pursue substantive proceedings in Singapore.

Good arguable case and real risk of dissipation: While this note has focussed on jurisdictional thresholds, it is also important to remember that when seeking an injunction, a plaintiff must be able to demonstrate that it has a good arguable case on the underlying merits of the dispute, and that the injunction is necessary because of a real risk of dissipation of assets. The latter would typically require a plaintiff to make its injunction application without undue delay. On the facts of *China Medical*, while the CoA acknowledged that there was a long period of time (of about five years) between the commencement of substantive proceedings in Hong Kong and the applications for injunctive relief, the CoA was satisfied that the applications were properly brought soon after the liquidators became aware of steps attempted by the defendants to dissipate their assets.