

The inaugural Ian Fletcher International Insolvency Law Moot (2017)

CLARIFICATIONS

Identification of teams for these questions has been removed and the questions renumbered and occasionally small changes made.

Grounds for Appeal

Several teams have queries regarding the wording of the Background paragraphs [16] to [19] and the Leave to Appeal paragraphs [3] to [5]. For clarity, a revised document has been posted to the website. A version with paragraphs adjusted by means of tracked changes will be emailed to all registered teams.

All parties agree the statements in Pearson J page 9 paragraph [13]. The Appellants' position is that while the Chapter 11 proceeding is a "foreign proceeding", the Chapter 11 proceeding should not be recognised as a foreign main proceeding or a foreign non-main proceeding.

The Supreme Court does not expect to hear from counsel on art 22(1).

Procedural

We received some queries regarding the format of the written submissions.

- 1) The term 'memorial' is used interchangeably with 'written submission'. It is not intended as a term of art.
- 2) The Appellants' 2,000 word written submission is to contain the Appellants' submissions on the Appeal and in response to the Cross-Appeal. For such response, teams are to anticipate the issues they consider may be raised on Cross-Appeal. This approach also applies to the Respondent's 2,000 word written submission. The process differs from the Oral Arguments hearings round where there will be an exchange of outlines (Rule F.2-4). Note Rule E.4 states that the scope of the oral arguments is not limited by the written submissions.
- 3) No examples of written submissions are available.
- 4) It is anticipated that teams will provide:
 - a) a heading for each particular argument;
 - b) then argue that particular point, applying legal principles to the problem (Background, Insolvency Court judgment by Pearson J and the Supreme Court order on the Leave to Appeal; read in light of clarifications) and substantiating argument as relevant by reference to:
 - i) the Cross-border Insolvency Act 2016 (Nuzilia)
 - ii) case law on the UNCITRAL Model Law for Cross-border Insolvency (1997) as adopted in jurisdictions other than Nuzilia; and
 - iii) secondary materials, such as the UNCITRAL texts relevant to the Model Law on Cross-border Insolvency (1997).

Questions and Clarifications

- 5) For suggested headings and setting out, see the Annexure at the end of this document. To the extent of any inconsistency with Attachment D of the Rules, this Annexure replaces such part of the Rules.

Facts

Question 1	What operations does Car Part Manufacturing Holdings Ltd undertake, as opposed to its subsidiaries?
<i>Clarification</i>	<i>The operations of Car Part Manufacturing Holdings Ltd are controlling a business which manufactures car parts. [Background page 1 paragraph [1]]</i>
Question 2	As Chief Restructuring Officer, what rights (voting rights) and obligations does Ames have with Car Part Manufacturing?
<i>Clarification</i>	<i>Ms Ames is a member of the Board of Directors with the same rights (voting rights) and obligations as other members of the Board (except the Chair who has the right to a casting vote in a deadlock). She is authorised by the Board to undertake a restructuring process out of New York. [Pearson J page 7 paragraph [7(b)]]</i>
Question 3	How many directors were in New York and Nuzilia respectively when the board meetings and other operations were conducted?
<i>Clarification</i>	<i>This varied from meeting to meeting. There were 6 members of the Board, including Ms Ames. The Chair and Ms Ames were always in New York for Board Meetings and occasionally they were joined by 1-2 other Directors. The Directors who were not in New York telephoned in from Nuzilia. [Background page 1 paragraph [6(e)]]</i>
Question 4	Were the noteholders notified of the letters sent to the trade creditors regarding the move of the Head Office to New York?
<i>Clarification</i>	<i>Car Part Manufacturing sent letters to all creditors notifying them that the Head Office had been moved to New York. [Pearson J page 8 [paragraph [7(f)]]</i>
Question 5	Is Car Part US LLC wholly owned by Car Part Operations?
<i>Clarification</i>	<i>No. it is a wholly owned subsidiary of Car Part Manufacturing Holdings Ltd. [Pearson J page 8 paragraph [7 (g)]]</i>

Questions and Clarifications

Question 6	What are the requirements for an entity to be deemed insolvent under the Insolvency Act 2014?
<i>Clarification</i>	<i>This is not relevant to the points on which the Court expects to hear. The prerequisites for a liquidation order under the Insolvency Act 2014 are met. [Pearson J page 15 paragraph [34]]</i>
Question 7	What is the scope of a liquidation order under the Insolvency Act 2014? a) Is there a strict legal meaning pertaining to what a liquidation order entails under the Insolvency Act 2014 or is “liquidation” being used in the broad sense which could effectively allow for a sale and winding up of the company?
<i>Clarification</i>	<i>A Nuzilian liquidation order under Insolvency Act 2014 has the same broad meaning as “liquidation” in the UNCITRAL Legislative Guide (2004) at paragraph [12 (w)] “proceedings to sell and dispose of assets for distribution to creditors in accordance with the insolvency law.”</i>
Question 7	b) Is the liquidation order and the corresponding powers of the liquidator strictly limited to those described in paragraph 36 of the Judgment of Pearson J?
<i>Clarification</i>	<i>The relevant aspects of the liquidation order under the domestic Nuzilian insolvency law are the powers of the liquidator described by Pearson J page 15 in paragraph [36].</i>
Question 7	c) Could a copy of the Insolvency Act 2014 be provided?
<i>Clarification</i>	<i>This is not required for the points on which the Court expects to hear.</i>
Question 8	Is it assumed that Car Part Manufacturing and its various entities are an enterprise group?
<i>Clarification</i>	<i>This is not relevant to the points on which the Court expects to hear. These require consideration of the UNCITRAL Model Law on Cross-border Insolvency (1997) as adopted in the hypothetical jurisdiction of Nuzilia.</i>
Question 9	a) By what means were the assets transferred from Car Part Operations to Car Part USA?
<i>Clarification</i>	<i>This is not relevant to the points on which the Court expects to hear.</i>
Question 9	b) What does “trading assets” encompass, as detailed in paragraph 7(h) of the Judgment of Pearson J? In contrast, paragraph 6(g) of The Problem describes a transfer of “all of its assets, including the factory ...”.

Questions and Clarifications

<i>Clarification</i>	<i>To clarify, “trading assets” as detailed in paragraph 7(h) of the Judgment of Pearson J are the same as “business assets” in paragraph 8(b) of the Background document. To the extent there is any inconsistency, the statement in the Judgment of Pearson J in paragraph 7(h) overrides the statement “all of its assets, including the factory...” in paragraph 6(g) of the Background document.</i>
Question 10	What is the “security” that was granted to the Senior Noteholders over the shares of Car Part Manufacturing?
<i>Clarification</i>	<i>This is not relevant to the points on which the Court expects to hear.</i>
Question 11	a) Did Car Part Manufacturing fully register its New York office (as stated in paragraph 6(b) of the Background) before filing Chapter 11 proceeding? Or did they merely “take steps to”, but not necessarily complete, registering the New York Office as suggested in paragraph 7(e) of the Judgment of Pearson J?
<i>Clarification</i>	<i>Car Part Manufacturing Ltd fully changed its registered office to New York before filing the Chapter 11 proceeding.</i>
Question 11	b) What exactly is the corporate structure? It looks as though Car Part Operations was never officially “moved” to New York?
<i>Clarification</i>	<i>Car Part Operations and Car Part USA are wholly owned subsidiaries of Car Part Manufacturing Holdings Ltd. Car Part Operations continues to be registered in Nuzilia.</i>

IN THE SUPREME COURT OF NUZILIA

SC Case No. 1/17

IN THE MATTER OF CAR PART MANUFACTURING HOLDINGS LTD

BETWEEN GROUP OF SENIOR NOTEHOLDERS,
Appellants

AND KELLEY AMES
Respondent

SUBMISSION FOR APPELLANTS
REPRESENTED BY TEAM TT

GROUND FOR APPEAL: Pearson J erred in recognising the Chapter 11 proceeding as a foreign proceeding for which relief was available under the Cross-border Insolvency Act 2016 (Nuzilia). Pearson was correct not to recognise it as a foreign main proceeding. Pearson J was incorrect to recognise it as a foreign non-main proceeding.

ARGUMENT 1 ...

1. The submissions follow the logic of arguments to be raised by the Appellant relevant to the Ground for Appeal.
- 2.

RESPONSE TO CROSS-APPEAL: Pearson J was correct to order that Car Part Manufacturing Holdings Ltd be put into liquidation.

ARGUMENT 1 ...

1. The submissions follow the logic of arguments anticipated to be raised by the Respondent on the Cross-Appeal.
- 2.

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SC Case No. 1/17

IN THE MATTER OF CAR PART MANUFACTURING HOLDINGS LTD

BETWEEN GROUP OF SENIOR NOTEHOLDERS,
Appellants

AND KELLEY AMES
Respondent

SUBMISSION FOR RESPONDENT
REPRESENTED BY TEAM TT

GROUND FOR CROSS-APPEAL: Pearson J erred in making an order that Car Part Manufacturing Holdings Ltd be put into liquidation.

ARGUMENT 1 ...

1. The submissions follow the logic of arguments to be raised by the Respondent relevant to the Ground for Cross-Appeal.
- 2.

RESPONSE TO APPEAL: Pearson J was correct in recognising the Chapter 11 proceeding as a foreign proceeding for which relief is available under the Cross-border Insolvency Act 2016 (Nuzilia). Pearson J erred in not recognising the Chapter 11 proceeding as a foreign main proceeding.

ARGUMENT 1 ...

1. The submissions follow the logic of arguments anticipated to be raised by the Appellant on the Appeal.
- 2.