



Singapore High Court dismisses a US\$378 million enforcement action against a Venezuelan state-owned company facing US sanctions

1. In a recent pronouncement by the Singapore High Court, the Court dismissed the enforcement action by a multi-national company against a Venezuelan state-owned company engaged in the transportation of hydrocarbons, for a claim of over US\$378 million.
2. The claim was mounted on the basis that the Venezuelan state-owned entity ("**SOE**"), which presently faces US sanctions, was an *alter ego* / extension of the State. The claimant sought a declaration that would have allowed it to enforce an ICSID award obtained against the Bolivarian Republic of Venezuela ("**Venezuela**") for over US\$378 million against the Venezuelan SOE's own assets.
3. Abraham Vergis S.C., Nawaz Kamil, and Lyndon Choo, from Providence Law Asia LLC, acted for the Venezuelan SOE in successfully resisting the enforcement action in the Singapore High Court.

Introduction

4. On 23 May 2022, the Singapore High Court dismissed an Originating Summons application brought by a multi-national company, OI European Group B.V. ("**OIEG**").
5. OIEG sought a declaration that liabilities owed by Venezuela to OIEG in the form of an ICSID award for over US\$378 million, may be enforced against the Singapore assets of PDV Marina S.A. ("**PDVM**"), a Venezuelan company wholly owned by PDV S.A. ("**PDVSA**"), which is in turn wholly owned by Venezuela. PDVM and PDVSA are both entities facing sanctions imposed by the USA.
6. The application by OIEG is significant in being the first known action in the Singapore Courts by a judgment creditor seeking enforcement of a sovereign State's liabilities against the entities owned by the State. Similar actions have also been commenced by global creditors in other jurisdictions such as the USA, United Kingdom, and Netherlands, with mixed results. This article aims to encapsulate the guiding principles laid down for the first time by the Singapore High Court in a cross-border claim of this nature.

Background Facts

7. OIEG obtained recognition of the ICSID award in Singapore in the form of a Singapore judgment. It then sought enforcement of the judgment against PDVM, on the basis that PDVM was an *alter ego* and/or organ of Venezuela.
8. In support of its claim, the primary evidence adduced by OIEG were separate reports prepared by a fraud investigations and asset tracing firm (the "**Reports**"). The Reports included conclusions on the relationship between PDVM, PDVSA, and Venezuela, based on searches on the Internet, newspaper articles, and other publicly available materials. In

addition, OIEG also adduced expert evidence to show how PDVM can be considered an *alter ego* and/or organ of Venezuela under Venezuelan law, based on the evidence in the Reports.

Holding by the Court

9. On the substance of OIEG's claim, the Court had to determine whether PDVM can be considered an *alter ego* / organ of Venezuela.
10. In this regard, the Court cited with approval the Privy Council's decision in *La Generale des Carrieres et des Mines v FG Hemisphere Associates LLC* [2013] 1 All ER 409 ("**FG Hemisphere**").
11. In particular, the Court observed that as a starting point, there should be a *strong presumption* that Singapore Courts will respect the separate corporate status of a separate juridical entity formed by a State for what are, on their face, industrial or commercial purposes. Extreme circumstances are required to displace such a presumption.
12. Factors that the Court will look at include the constitutional arrangements of the entity as they are applied in practice, the control that the State exercises over the entity and its activities, and whether the entity exercises governmental function. Governmental function is confined to those acts that are sovereign in nature, and governmental purpose does not without more convert a private act into a sovereign act. In addition, activities of the state-owned entity that go beyond the activities which a state-owned entity usually engages in (such as profit-making activities either at an entity or group level) may support the existence of extreme circumstances.
13. On the facts, the Court accepted as a starting point that PDVM was an entity with a separate legal personality, and it was on OIEG to show that PDVM's relationship with PDVSA, and PDVSA's relationship with Venezuela, is very different from the usual parent/subsidiary relationship or State/state-owned entity relationship.
14. The Court found that PDVM's constitution, internal structure, accounts, and the clear delegation of roles across business functions in PDVM was consistent with PDVM being a wholly separate company from PDVSA and Venezuela. While OIEG pointed to facts to show the control that PDVSA / Venezuela had over PDVM, the Court held that none of those facts qualified as extreme circumstances that were inconsistent with a group of companies run by an ultimate holding company as a unified commercial and economic enterprise distributed across different legal entities. If such degree of control was sufficient to render PDVM an extension of Venezuela, the same would be true of every wholly owned subsidiary in a corporate group. The division of roles between companies in a group for an efficient use of resources is not illegitimate and is a proper use of corporate form.
15. The Court also found that the evidence adduced showed that PDVM was subject to governmental regulatory oversight like any commercial entity, and had in fact taken adversarial approaches against the Venezuelan tax authorities, which was inconsistent with a suggestion that Venezuela had control over PDVM which renders PDVM an extension of Venezuela.
16. The Court also found that PDVM, being a company that transports hydrocarbons, performed no governmental functions. PDVM engages in commercial / trading activities and that militates against a finding that PDVM is an organ of Venezuela. Although there were some facts suggesting that some of PDVM's activities went beyond the realm of

commercial functions, these facts were not sufficiently extreme or atypical to rebut the strong presumption that PDVM is a separate entity.

17. Finally, the Court also did not accept that it should reverse pierce the corporate veil between PDVM and PDVSA, and between Venezuela and PDVSA. In particular, there was no abuse of the corporate structure to conceal / divert assets / liabilities and PDVM is not a mere device or façade. Further, even if the test for veil piercing is made out to make Venezuela's assets open to PDVM's creditors, that was a wholly separate question from whether PDVM's assets should be made accessible to the creditors of Venezuela (to the prejudice of PDVM's own creditors).
18. Besides dealing with the substance of OIEG's claim, the Court also made observations on evidentiary issues with OIEG's claim, as well as on the proper law that governs the issue of whether PDVM should be regarded as an *alter ego* and/or extension of Venezuela.

Concluding observations

19. This decision by the Singapore High Court is an important decision which sets out the approach that the Singapore Courts would take in deciding whether a state-owned entity is an extension of a State. This also appears to be the first Singapore Court decision which considers the proper law for considering the issue of whether an entity is an *alter ego* and/or an extension of the State in situations akin to corporate veil piercing.
20. The Court's decision is a commercially sound one that will protect the interests of the trading partners and creditors of state-owned entities. Just like in *FG Hemisphere*, the Singapore High Court recognised that state-owned entities are a feature of modern commerce, and it would not be commercial or practical for a State's liabilities to be levied against its state-owned entities.
21. State-owned entities that operate in Singapore can take assurance in the high threshold that the Singapore Court has set, before creditors of States can seek to impose the State's debts and liabilities on the assets of state-owned entities in Singapore.
22. The Court's observations on the evidentiary issue also highlights to creditors seeking to commence similar actions, the importance of securing admissible and direct evidence before commencing similar enforcement actions in Singapore.

If you would like information on this area of law, please contact:



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