

Cayman Court finds that arbitration clauses in shareholders' agreements will apply to disputes over a company's articles

Briefing Summary: *In the matter of Ren Ci & Ors* (FSD 210 of 2022), the Grand Court of the Cayman Islands granted a stay of proceedings in favour of a HKIAC arbitration pursuant to section 4 of the Foreign Arbitral Awards Enforcement Act. In so doing, the Court then held that: an arbitration clause contained in a shareholders' agreement would apply even if the pleaded case was not based on a breach of the relevant contracts, but rather, on a breach of the articles of association; and an application for injunctive relief which contains an appropriate reservation of rights to arbitrate does not constitute a voluntary submission to the court's jurisdiction.

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The Background

This was a joint venture comprising two groups of investors led by Ren Ci (the "**Plaintiff**") and Wang Yanzhi (the "**Defendant**") respectively. The investors' relationship was governed by a Share Purchase Agreement, Shareholders' Agreement, and Share Restriction Agreement (the "**Shareholders' Agreements**"), each of which contained an arbitration clause providing for arbitration administered by the HKIAC.

Disputes arose over the management and ownership of the joint venture company (the "**JVC**"). The Defendant had procured the JVC to take action following the alleged discovery of financial misconduct by the Plaintiff – including, passing resolutions to remove the Plaintiff as director of the JVC and to repurchase the Plaintiff's shares in the JVC. In response, the Plaintiff claimed that the resolutions passed were in breach of the Articles of Association (the "**Articles**"), and sought *inter alia* rectification in respect of the JVC's register of directors and members.

The Defendant applied to stay the proceedings. There were two key issues for the Grand Court.

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- Did the arbitration clauses cover the disputes concerning the validity of the resolutions passed which would otherwise be the subject of court proceedings? (the "**Scope Issue**")
- Did the Defendant lose the right to apply for a stay as a result of his application for injunctive relief? (the "**Waiver Issue**")

The Scope Issue

It was the Plaintiff's case that the dispute fell outside of the scope of the arbitration agreement as it arose in connection with a breach of the Articles, and in contravention of any provisions of the Shareholders' Agreements. The Plaintiff sought to distinguish between disputes arising out of the company's articles and those which flowed from the shareholders' agreements.

- Articles are "*governed by recourse to the courts in accordance with the ordinary principles of company law*" and are in the nature of a "*public contract*".
- Shareholders' agreements are a "*private contractual relationship*" between the parties and are subject to the terms (including the arbitration clause).

According to the Plaintiff, it was appropriate in the company law context to depart from the presumption that, parties, as rational business people, would intend any dispute arising out of their relationship to be decided by the same tribunal. This view had gained considerable traction in Hong Kong in *Dickson Holding Enterprise Company v Moravia CV* [2019] HKCFI 1424 and in Singapore in *BTY v BUA* [2018] SGHC 2013.

The Court rejected this analysis. In the Court's view, there was no reason to depart from the presumption in favour of adjudication by a single tribunal. The Court was not persuaded that the rights of shareholders which arise under the Articles stood on a different plane to their rights under the Shareholders' Agreement for the purposes of assessing if a different dispute resolution regime should apply (citing with approval *NDK Limited v HUO Holdings Limited* [2022] EWHC 1682). The arbitration clause in the Shareholders' Agreements therefore applied to dispute arising out of breaches of the Articles.

The Waiver Issue

The Court likewise rejected the Plaintiff's argument that the Defendant had waived his right to arbitration by virtue of applying for an interlocutory injunction. An appropriate reservation of his right to arbitration had been made by the Defendant:

- when he filed his acknowledgement of service;
- on multiple occasions in party correspondence after the action had commenced; and
- critically, in his affidavit in support of the injunction which had made plain that an injunction was necessary, whether the proceedings were stayed or continued in the Cayman Courts, in order to preserve the status quo pending determination of the dispute.

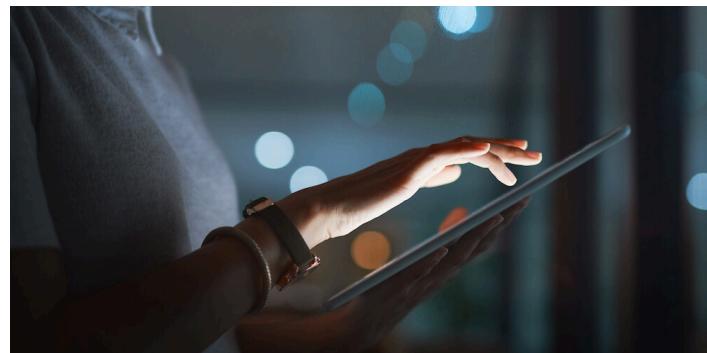
In the court's view, the Defendant's conduct in the proceedings did not meet the test of "*an election to abandon the right to a stay in favour of allowing the action to proceed*". This is necessarily a fact-specific inquiry where the courts will carefully scrutinize the actions of the party objecting to proceedings, continuing before the Court.

Takeaways

This judgment reflects a robust pro-arbitration stance adopted by the Cayman Grand Court. The arbitration clause in the Shareholders' Agreements was deemed sufficiently broad to cover breaches of the Articles. Therefore, if Parties wish to have some issues decided by one tribunal and other issues decided by another, they must expressly say so. If they do not, they will generally be taken to have agreed on a single tribunal for the resolution of all such disputes.

Given the court's firm stance towards interpretation of arbitration clauses, it may be more profitable for a party opposing arbitration to raise the spectre of non-arbitrability. On this occasion, a claim for rectification of the register of members and directors under section 46 of the Companies Act (2023 Revision) was contemplated as relief that was within the exclusive jurisdiction of the courts (and not suitable for arbitration). However, the Court observed that the issue was not significantly developed during oral submissions to warrant any relief on that basis. This remains a developing area of law, especially with the pending Privy Council decision in *FamilyMart China Holding Co v Ting Chuan (Cayman Islands)* which was heard in November 2022.

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