

Substance Over Form: Cayman Islands Court Stays Specific Performance Claim in Favour of Hong Kong Arbitration

In *TB Mgmt LLC & Ors v Taibang Biological Ltd* [2026] CIGC (FSD) 83, the Cayman Islands Grand Court (the "Court") stayed a Cayman Islands proceeding in favour of a Hong Kong arbitration on the basis that the arbitration concerned the same 'core substantial dispute'.

The decision is a useful reminder of how the Court approaches (i) the scope of arbitration clauses, and related mandatory stays, under the Foreign Arbitral Awards Enforcement Act (1997 Revision) ("FAAEA") and (ii) company representation in Cayman Islands proceedings.

Background

The Cayman Islands proceeding was brought by two shareholder vehicles (the "Plaintiffs") against the company in which they held shares, Taibang Biological Ltd (the "Defendant").

At stake was the redemption of shares said to be worth more than US\$87 million. The Plaintiffs claimed that the Chairman of the Defendant had been removed without 'cause', triggering management redemption rights under the Defendant's articles of association and a shareholder agreement ("SHA"). The Plaintiffs issued Cayman Islands proceedings seeking an order for specific performance compelling the Defendant to redeem shares at 'Fair Market Value' (pleaded as US\$52.5 million and US\$34.7 million respectively).

The Specific Performance Carve-Out

Three days later, the Defendant commenced an arbitration in Hong Kong seeking a declaration that the redemption rights had not been triggered. The appointed arbitral tribunal was described by the Court as a "formidable and well-respected trio" consisting of: Lord Neuberger (former President of the UK Supreme Court and current Non-Permanent Judge of the Hong Kong Court of Final Appeal), Geoffrey Ma (former Chief Justice of Hong Kong) and Neil Kaplan CBE KC (a senior Hong Kong arbitration practitioner).

The SHA required disputes arising from it to be submitted to the Hong Kong International Arbitration Centre for arbitration, but contained a carve-out, headed 'Specific Performance', for equitable relief in the courts. The Plaintiffs sought to argue that the Specific Performance carve-out permitted the Cayman Islands proceeding to go ahead and that the Cayman proceedings were not properly subject to the arbitration agreement.

The Court's Findings: Substance of the Controversy Test

The Court (Doyle J) was not persuaded. Adopting the "substance of the controversy" approach based on English and Australian authorities, the Court held that the real fight was whether Mr Chow had been removed without cause, and if so

whether the redemption rights had been triggered.

As the Court put it: "In reality all the Plaintiffs want are their shares redeemed and money paid to them." The Court imposed a mandatory statutory stay and added that, had it been wrong on that point, it would have granted a discretionary case management stay in any event. Costs followed the event.

Key Takeaways for Arbitration and Cayman Islands Litigation

- (a) **In determining whether a claim falls within the scope of an arbitration clause or agreement for the purposes of an FAAEA stay, the Court will look to the reality or core substantial dispute, regardless of how a party has framed its case.** The Plaintiffs had "artificially contrived to present a claim for specific performance in an endeavour to carve the dispute out of arbitration", by dressing up a contractual damages or debt claim as specific performance.
- (b) **Whether headings may be of aid in construing a provision will depend on the terms of the agreement.** The carve-out stated that "... a non-breaching Party will have the right to seek an injunction, temporary restraining order or other equitable relief in any court of competent jurisdiction enjoining any such breach...". The Court found that the terms of the carve-out were clear in limiting its effect to interlocutory relief enjoining any breaches of the SHA, rather than a substantive claim for specific performance. The SHA also contained a section precluding the use of titles in construing it, such that the heading of the provision was not determinative.
- (c) **A party can waive its right to a stay under the FAAEA by taking a step in the proceedings it seeks to stay.** The Defendant had commenced separate proceedings against the former Chairman – however, this did not amount to "taking a step" in the present proceeding, as he and the Plaintiffs were separate legal entities.
- (d) **How companies may be represented and appear in Cayman Islands proceedings.** Under O.5, r.6(2) and O.12, r.1(2) of the Grand Court Rules (2023 Revision), in the usual course, other than acknowledging service of a writ and giving notice of intention to defend, a defendant body corporate may not take steps in an action other than through an attorney. The Plaintiffs in this case were unrepresented, and did not appear at the hearing whether by their directors, by attorneys or otherwise. The Court noted that, particularly in the context of complex commercial cases, the requirement for legal representation ought to be strictly adhered to (notwithstanding that it had the power, under the Cayman Islands Constitution and pursuant to rules of natural justice, to allow a non-lawyer to speak on behalf of a company to some extent) (referring to *Xingxuan Life Technology Ltd* (FSD, unreported judgment delivered on 9 January 2024, and the cases adopted therein).
- (e) **Failing to engage with the proceeding "is rarely, if ever, a good litigation tactic" and may result in matters in the case being heard unopposed.** Neither Plaintiff appeared at the hearing, and their third set of Cayman Islands lawyers had come off the record two weeks earlier. The former Chairman (Mr Chow) said that his poor health prevented him from securing counsel. The Court was unmoved, finding that he had "plainly

been able to engage in both sets of proceedings when it suited him", that both Plaintiffs could have instructed attorneys, and that the Second Plaintiff had other directors who could have caused an appearance to be entered. Non-engagement, in the Court's words, amounted to "burying your head in the sand". Proceeding in the Plaintiffs' absence was fair and just because "They were aware of the hearing and of the need to be legally represented but they had deliberately chosen not to attend and were adopting an unhelpful and potentially abusive strategy of non-engagement."

Further Information

If you would like further information on shareholder disputes governed by arbitration and director claims in the Court, please contact one of the contributors.

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