In The Supreme Court of Bermuda

CIVIL JURISDICTION

2024: No. 181

IN THE MATTER OF SECTION 67 OF THE BERMUDA COMPANIES ACT 1981

AND

BETWEEN:

(1) COMPANY A

(2) COMPANY B

APPLICANTS

AND

(1) COMPANY C

(2) COMPANY D

RESPONDENTS

RULING
(In Chambers)

Application for a stay of proceedings pending arbitration

Date of Hearing: 9 April 2025
Date of Ruling: 19 May 2025

Appearances: ***Henry Tucker*** **of Harneys Bermuda Limited for the Second Respondent (the applicant for the stay of proceedings)**

Jonathan O'Mahoney **of Conyers Dill & Pearman Limited for the Applicants (the respondent to the application for a stay of proceedings)**

RULING of Martin, J

Introduction

1. The principal claim in these proceedings is an application by the First Applicant (hereinafter referred to as "Company A") for an order under section 67 of the Companies Act 1981 to rectify the register of members of the First Respondent (hereinafter referred to as "Company C") to reflect that Company A's designee, the Second Applicant (hereinafter referred to as "Company B") is the legal owner of 40,000 common shares of Company C in place of the Second Respondent (hereinafter referred to as "Company D"), following the exercise of the rights of sale granted under a first fixed charge over those shares granted by Company D in favour of Company A.

2. In the present application, Company D has applied to the court to stay these proceedings in favour of an arbitration proceeding Company D has commenced in the Singapore International Arbitration Centre ("SIAC"). The circumstances in which the present application arises will be set out in detail below, but the issue for determination on this application is whether this Court should grant a stay pursuant to Article 8 (1) of the UNCITRAL Model Law on international arbitrations which has been incorporated into the law of Bermuda under section 23 and Schedule 2 of the Bermuda International Conciliation and Arbitration Act 1986 ("BICA").

3. The application of Article 8 turns on the issue whether the arbitration proceeding commenced by Company D engages the arbitration agreement contained in clause 29 of a Settlement Agreement between Company D and Company A which requires the parties to refer any dispute question or matter arising thereunder to arbitration: in short, does the "matter" that Company D has raised in the arbitration extend to the issue which is the subject of these proceedings?

Summary and Disposition

4. For the reasons set out below, the Court is satisfied that the substantial matter which is the subject of these proceedings, namely Company A's right to be registered either in its own name or in the name of its nominated designee as the holder of 40,000 shares in Company C , is within the terms of the arbitration agreement contained in clause 29 of the Settlement Agreement (hereafter set out) and that the Notice of Arbitration that has been served by Company D upon Company A thereunder has validly invoked Company D's right to have that issue determined by arbitration.

5. The Court has also found, for the reasons given below, that there is no reason why the Court should not give effect to the arbitration agreement and pursuant to Article 8 and BICA and has granted a stay of these proceedings pending the outcome of the arbitration commenced by Company D by Notice of Arbitration dated 8 August 2024.

6. The Court has reserved the costs of these proceedings (and the stay application) to abide the outcome of the Company D Arbitration Proceedings.

Background summary[1]

7. The background to the dispute between the parties in this case has a long and complicated commercial history. The Court does not need to set out all of those details in full in order to explain why it has arrived at the conclusion that the application for a stay of the Bermuda proceedings should be granted. There follows a summary of what the Court considers to be the key factual matters.

8. Company D is owned by Company E which is in turn owned by Company F. Company F and its affiliates borrowed substantial sums from the Bank. Which have taken security over Company F's assets. Company F needed additional funding and sought additional capital by way of loan capital from external investors.

[1] The factual summary has been taken from the summary of facts presented by each of the parties in their respective skeleton arguments, which in turn have been set out in the evidence filed by each side in support of their respective positions. For the purposes of recording the history of events, there are no relevant disputes of fact to resolve.

9. On 10 December 2015 Company A lent Company D US$100 million pursuant to the terms of a Convertible Loan Agreement[2], pursuant to which the Company A would convert the loan into 100 million new shares in Company D upon fulfilment of certain conditions (which are not relevant to record here).

10. On the same date, Company A and Company D's parent company, Company E entered into a Share Subscription and Shareholder Agreement [3] ("the SSA") which provided for Company A's subscription for shares in Company D on the conversion date in the Convertible Loan Agreement. By the terms of clause 9A of the SSA, Company D granted Company A a put option[4] ("the Put Option") which was exercisable on the 5th anniversary of the Conversion Date, by the terms of which Company A had the ability to require Company D to repurchase the 100 million shares from Company A.

11. On 10 August 2016 ("the Conversion Date") the conditions of the Convertible Loan Agreement were satisfied and Company A converted its US$100 million investment into 100 million new shares in Company D.

12. On 11 August 2021 (i.e. the day after the 5th anniversary of the Conversion Date), Company A exercised the Put Option and required Company D to repurchase the 100 million shares at US$100 million together with interest at the contractual rate of 5% per annum.

13. However, Company D failed to repurchase the shares upon the terms required by the Put Option. A dispute arose and arbitration proceedings were commenced in the SIAC. These arbitration proceedings were later compromised on terms agreed between the parties.

14. To give effect to this compromise, on 21 November 2022 a Settlement Agreement[5] ("the Settlement Agreement") was entered into between Company D and Company A. By its terms, Company D agreed to repurchase Company A's 100 million shares and

[2] Hearing Bundle (HB) pp228-40
[3] HB-241-265
[4] HB-253-4

agreed to transfer 40,000 common shares in Company C as the Put Option Consideration and to secure this obligation, Company D granted Company A a fixed charge 6 over Company C's shares ("the Share Charge").

15. It is relevant to record that the Convertible Loan Agreement, the SSA and the Settlement Agreement are governed by Singapore law and each provide for arbitration in the SIAC. The Share Charge is governed by Bermuda law but also contains an agreement for arbitration of disputes in Singapore in the SIAC.

16. Under the Settlement Agreement Company D was required to meet Company A's costs in relation to the proceedings taken to enforce Company D's obligations under the SSA which were in the approximate amount of US$1.4 million, and agreed to apply any distributions or dividends from Company C to meet those costs.

17. On 25 May 2023 (unknown to Company A at the time) Company D wrote to Company C indicating that it waived its right to receive its share of dividends amounting to US$9,256,231.72.

18. On 7 June 2023, Company A wrote to Company D seeking payment of the balance of their costs in the amount of approximately US$600,000, Company D having paid from other sources approximately US$800,000 to pay that obligation. Company D did not pay the balance due.

19. On 4 September 2023 Company A formally declared a default under the Settlement Agreement in respect of the unpaid US$600,000 due in respect of Company D's outstanding costs liability. It then emerged that the dividend monies that were available for distribution but receipt of which had been "waived" by Company D had been paid by Company C to Company F (Company D's ultimate parent) to satisfy certain of Company F's loan obligations to the Bank. .

[5] HB-271-339
[6] HB-125-139

20. On 13 December 2023 Company A appointed Receivers ("the Company A Charge Receivers") over Company D's shares in Company C pursuant to its powers under the Share Charge and sought bids for the shares. In the exercise of its rights under the Share Charge, acting as agents for Company D, the Company A Charge Receivers executed a share transfer of the Company D shares in favour of Company A by way of discharge of Company D's liabilities under the Settlement Agreement (in effect bidding the value of Company D's debt obligation under the Settlement Agreement for the shares).

21. On the same date, the Bank appointed receivers ("the Bank Receivers") over Company E pursuant to the terms of a share charge dated 11 April 2019 which had been entered into by Company F in respect of a Finance Agreement dated 14 November 2016.

22. On 8 April 2024 Company C refused to register the transfer of shares from Company D to Company A because it claimed that there was a dispute over the validity of the transfer of the shares by the Company A Charge Receivers.

23. On 22 May 2024 Company A responded indicating that notwithstanding the dispute over the waiver of the dividend, the Long Stop date for payment of the principal obligation under the Settlement Agreement to transfer the 40,000 shares in Company C had passed and declared a separate event of default. On the basis of this new event of default, but without prejudice to its prior declaration of an event of default, Company A re- asserted its right to enforce the debt obligation by enforcing its rights under the Share Charge and the Company A Charge Receivers executed a second instrument of transfer in relation to Company D's 40,000 common shares in Company C and sought registration of those shares in the name of Company A.

24. Company A subsequently decided that it wanted to register the shares in the name of a related company (i.e. Company B) and obtained the ordinary regulatory approvals required to do so.

25. Company C refused to recognize the second instrument of transfer and declined to register Company B as the registered owner of those shares. On 11 July 2024 Company A commenced these Bermuda proceedings under section 67 of the Companies Act

1981 to rectify the register of Company C to reflect the ownership of 40,000 common shares in the name of Company B.

26. On 25 July 2024 the Bank Receivers alleged that the Put Option in the SSA was void because it imposed an obligation on Company D to repurchase its own shares and claimed that this offends the rules against giving financial assistance for the purchase of a company's shares contained in section 76A (1) (i) (a) of the Companies Law 1967 (Singapore) ("the Singapore Companies Law"). It was also claimed that if the Put Option is void, then the Deed of Settlement is void, as well as the Share Charge, on the grounds that these documents had been entered into while the parties were acting under a common mistake of fact or law that Company A's Put Option rights were valid.

27. On 5 August 2024 the Bank Receivers, acting as agents for Company E, commenced arbitration proceedings in Company E's name in the SIAC ("the Company E Arbitration") against Company D and Company A seeking a declaration that the Put Option in the SSA is void because it breaches the provisions of Section 76A (1) (a) (i) of the Singapore Companies Law and that, as a result, the Settlement Agreement and the Share Charge are also void.[7]

28. On 8 August 2024 Company D also commenced an arbitration proceeding in the SIAC against Company A ("the Company D Arbitration") seeking a declaration that the Deed of Settlement and the Share Charge are void and that Company A's appointment of receivers over Company D's shares in Company C are also void[8]. If so, they claim that the purported transfer of shares executed by the Company A Receivers in Company D's name is of no effect.

29. Company D has put in a defence to the Company E Arbitration on the basis that Company E is not a party to the Settlement Agreement and there is no arbitration agreement which binds Company D to arbitrate Company E's claims in relation to the Settlement Agreement[9].

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[7] HB-353
[8] HB-364-5
[9] HB-403 at paragraph 24.

30. Company D's position in the Company D Arbitration is that if the Put Option in the SSA is void (as contended for by Company E in the Company E Arbitration) then the Settlement Agreement and the Share Charge are void on the basis of a mutual mistake of fact or law as to the validity of the Put Option[10].

31. Company A has challenged the basis on which both of the arbitration proceedings have been launched.

32. In respect of the Company E Arbitration, Company A says that there are fundamental jurisdictional issues both as to standing and the absence of a dispute which is referable to arbitration. As to the substantive claim by Company E , Company A says that the Settlement Agreement was not entered into on the premise the Put Option was valid but to compromise the dispute. Company A says that the Share Charge was entered into to secure Company D's obligations under the Settlement Agreement[11].

33. In respect of the Company D Arbitration, Company A says there is no dispute under the arbitration agreement and challenges the premise of the reference to arbitration on the basis that it is contingent on the outcome of the Company E Arbitration[12].

34. On 21 November 2024 the SIAC consolidated the Singapore arbitration proceedings.

35. Company D now applies to this Court for an order to stay Company A's proceedings in Bermuda to rectify the register on the grounds that there are presently arbitration proceedings on foot in Singapore between Company D and Company A which cover the same issues (namely Company A's right to be registered as the legal owner of the shares in Company C) and that by virtue of Article 8 (1) of the UNCITRAL Model law (which has been incorporated into Bermuda law by section 23 of the BICA and Schedule 2) the Court is required to grant that application.

[10] HB-364 at paragraph 25.
[11] HB-552-5 at paragraphs 7-13 and 15-18.
12 HB-499-502 at paragraphs 4, and 9-11.

The statutory framework

36. Article 8 (1) of the Model Law provides:

> *"(1) A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed.*
>
> *(2) Where an action referred to in paragraph (1) of this article has been brought, arbitral proceedings may nevertheless be commenced or continued, and an award may be made, while the issue is pending before the court."*

37. The provisions of the Singapore Companies Law relied upon by Company E and Company D state:

> *"**Company financing dealings in its own shares, etc.***
>
> *76(1A) Except as otherwise expressly provided by this Act, a company must not—*
> *(a) Whether directly or indirectly, in any way—*
> *(i) acquire shares or units of shares in the company; or*
> *(ii) purport to acquire shares or units of shares in a holding company or ultimate holding company, as the case may be, or the company; or*
>
> *(b) whether directly or indirectly, in any way lend money on the security of –*
> *(i) shares or units of shares in the company; or*
> *(ii) shares or units of shares in a holding company or ultimate holding company, as the case may be, of the company.*
>
> ***Consequences of company financing dealings in its shares, etc.***
>
> *76A (1) The following contracts or transactions made or entered into in contravention of section 76 are void:*
>
> *(a) a contract or transaction by which a company acquires or purports to acquire its own shares or units of its own shares, or shares or units of shares in its*

holding company or ultimate holding company, as the case may be;

*(b) a contract or transaction by which a company lends money on the security of its own shares or units of its own shares, or on the security of shares or units of shares in its holding company or ultimate holding company, as the case may be.*The relevant legal principles

38. The Court's approach to the analysis of the position is informed by case law decided by the courts in England and applied by the courts in Bermuda.

39. Company D relies upon two general statements of principle which are not disputed by Company A. First, the words "*in connection with*" in the arbitration agreements are to be given a broad and generous interpretation[13]. Second, the Court will not examine the merits of the claims made in the Notice of Arbitration for the purpose of deciding whether or not to stay court proceedings in favour of arbitration where an arbitration agreement covers the matter which has been raised[14].

40. Company A relies upon more recent authority to show how the Court is required to approach the issues raised by Company D on this application. There have been two recent cases decided by the Privy Council which have developed the earlier case law and inform the modern approach the Court is required to take when presented with an application to stay court proceedings in favour of arbitration under Article 8 (or its equivalent).

41. In **Familymart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holding Corpn[15]** the Privy Council stated the position in the following terms in the speech of Lord Hodge DSPC:

"58. The Court in considering such an application adopts a two-stage process. First the court must determine what the matters are which the parties have

[13] See **Lenihan v LSF Consolidated Golf Holdings Ltd** [2007] Bda LR 49 at paragraphs 41-2 per Kawaley J (as he then was).
[14] See **Raydon Underwriting Management Co. Ltd v North American Fidelity and Guarantee Limited** [1994] Bda LR 65 per Meerabux J at pages 10-13 and 20 (applying **Hayter v Nelson** [1990} 2 Lloyd's Rep 265 approved by the House of Lords in **Channel Tunnel Group v Balfour Beatty Construction** [1993] AC 3,34).
[15] [2023] UKPC 33

raised or foreseeably will raise in the court proceedings, and secondly the court must determine in relation to each such matter whether it falls within the scope of the arbitration agreement. (See Tomolugen para 42 above; WDR Delaware [2016] FCA 1164, para 47 above and Sodzawiczny, para 50 above.)

59. The court must ascertain the substance of the dispute or disputes between the parties. This involves looking at the claimant's pleadings but not being overly respectful of the formulations in those pleadings which may be aimed at avoiding a reference to arbitration. It involves also a consideration of the defences, if any, which may be skeletal as the defendant seeks a reference to arbitration., and the court should also take into account all reasonably foreseeable defences to the claim or part of the claim. (See ***Lombard North Central****, para 37 above;* ***Quicksilver*** *[2014] 4 HKLR 759 para 38 above,* ***Tomolugen****, para 42 above* ***WDR Delaware****, para 47 above and* ***Sodzawiczny*** *[2018] Bus LR 2419, para 53 above.)*

60. Secondly, while Article II (3) of the New York Convention, which requires that the court refer a matter to arbitration, is silent as to the stay of court proceedings, legislation implementing this provision of the New York Convention has generally made express provision for a stay pro tanto….In the Board's view in this context the greater includes the lesser. Counsel did not argue otherwise in this appeal. Accordingly, the Board considers that section 4 of the FAAEA allows a pro tanto stay of legal proceedings.

61. Thirdly, in the Board's view, a "matter" is a substantial issue that is legally relevant to a claim or defence, or foreseeable defence, in the legal proceedings, and is susceptible to be determined by an arbitrator as a discrete dispute. If the "matter" is not an essential element of the claim or relevant defence, it is not a matter in respect of which the legal proceedings are brought. The Board agrees with the statement of Sundaresh Menon CJ in para 113 of ***Tomolugen*** *[2016] 1 SLR 373 that a "matter" requiring a stay does not extend to an issue that is peripheral or tangential to the subject matter of the legal proceedings. The Board agrees with Foster J's third proposition in* ***WDR Delaware*** *that a*

"matter" is something more than a mere issue or question that might fall for decision in the court proceedings or in the arbitration proceedings.

64. No judicial formula encapsulating the meaning of "matter" should be treated as if it were a statutory test. A court facing an application for a stay under section 4 of the FAAEA should approach the question in a practical and common-sense way. The court must respect the agreement of the parties to arbitrate their disputes. An agreement to arbitrate is an agreement not to resolve that dispute in court proceedings. Thus, any substantial matter in the legal proceedings, which is relevant to the claim or foreseeable defence, and which is within the scope of the arbitration agreement, will give rise to a mandatory stay of the legal proceedings pro tanto on the application of one of the parties. There is considerable authority to support the view that the procedural complexity caused by a reference to arbitration does not of itself render a matter non-arbitrable: see, for example, ***Wealands*** *[2000] 1 All ER (Comm) 30 para 26, Mance LJ,* ***Fulham*** *[2012] Bus LR 606, para 25, Patten LJ,* ***Tomolugen*** *para 105, Sundaresh Menon CJ. That does not mean that procedural complexity is irrelevant in all circumstances because the court, when addressing an application to stay legal proceedings to enable the determination of a dispute by arbitration, should be careful to prevent an abuse of process. The Board agrees with Andrew Smith J in* ***Lombard North Central*** *(para 37 above) that the court could refuse an otherwise mandatory stay if the applicant has no real or proper purpose for seeking the stay. That could include not only an application for a stay in relation to issues that were peripheral to the legal proceedings but also an application that amounted to an abuse of the process….There may be circumstances in which a party seeks a stay for an improper purpose and it would be contrary to justice if the court could not act to prevent an abuse of process….*

65. Fourthly, the exercise involving a judicial evaluation of the substance and relevance of the "matter" entails a matter of judgment and the application of common sense. It is not a mechanistic exercise. It is not sufficient merely to identify that an issue is capable of constituting a dispute or difference within the

scope of an arbitration agreement without carrying out an evaluation of whether the issue is reasonably substantial and whether it is relevant to the outcome of the legal proceedings which a party seeks to stay…

66. The approach to the word "matter" in section 4 of the FAAEA set out in paras 61-65 above may involve the fragmentation of the parties' disputes with some matters being determined by an arbitration panel and other matters beingresolved by the court. Such fragmentation may on occasion be inconvenient to one or more of the parties. Rational businesspeople may as a general rule prefer that their disputes are determined in the same forum: see Lord Hoffman in ***Fili Shipping Co Ltd v Premium Nafta Products Ltd*** *[2007] Bus LR 1719 ("Fiona Trust") paras 5-8. An arbitration agreement may be interpreted generously to achieve that end if the court can ascertain that as the parties' commercial purpose and the wording of the agreement can bear that meaning…"*

42. In **Sian Participation Corp v Halimeda International Limited**[16] a different panel of the Privy Council approved and applied the approach set out in **FamilyMart** in paragraphs 58, 59, 61 and 62 quoted above and the statement at paragraph 29 of Lord Hodge's speech (not quoted) which directs the court to take a "pro-arbitration" and "expansive" approach to the interpretation of the scope of arbitration agreements.

43. These principles have recently been adopted and applied by Mrs Justice Subair Williams in **Front Street Re (Cayman) Limited v Winchester Global Trust Company Limited and Castle Re Insurance Limited**[17] and this approach represents the current attitude of the Bermuda court.

Applying the legal principles to the facts of this case

44. The Court will therefore address itself to the following questions:

    (i) What is the substance of the matters which the parties have raised in the section

16 [2024] UKPC 16 at paragraphs 47 and 49 per Lord Briggs and Lord Hamblen JJSC.
17 [2024] SC Bda 37 Civ (5 August 2024) at paragraphs 53-4.

67 proceedings and the arbitration proceedings? The Court is not to be overly respectful of the way in which the parties have pleaded the issues and will take a broad approach to take into account the defences and potential defences that each may have in the court proceedings and the arbitration proceedings.

(ii) Are the matters raised in the arbitration proceedings the substantial matters that are in dispute between the parties? The Court will only take into account matters which are substantial matters of dispute and not matters which are peripheral or tangential to the main or substantial issues.

(iii) Do these main or substantial issues fall within the scope of the arbitration agreement? In considering this question, the Court will apply a pro-arbitration and expansive interpretation to the scope of the arbitration agreement.

(iv) If these requirements are satisfied, does the reference to arbitration amount to an abuse of process? If not, the Court will apply the terms of Article 8 of the Model Law and stay the proceedings in favour of the arbitration proceedings.

What is the relevant Arbitration Agreement for the purposes of Article 8 of the Model law?

45. A threshold issue is what is the relevant arbitration agreement to which the Court must address its mind.

46. In its Notice of Arbitration, Company E relied upon clause 29.3 of the SSA to refer the question of the validity of the Put Option to arbitration. However, Company E is not a party to these proceedings and has not invoked the arbitration agreement in the SSA insofar as these proceedings are concerned. It follows that the question whether the Put Option in the SSA is void is not a "*matter which is the subject of an arbitration agreement*" within the terms of Article 8 and is not the basis of Company D's application for a stay of these proceedings in this Court.

47. Company D relied upon the provisions of clause 15 of the Settlement Agreement and clause 24 of the Share Charge to refer the question of the validity of the Settlement Agreement and the Share Charge to arbitration.

48. Clause 15 of the Settlement Agreement provides (so far as material):

> *"15.1 This Agreement shall be governed by, and construed in accordance with, the laws of Singapore.*
> *15.2 Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination, shall be referredto and finally resolved by arbitration administered by the Singapore International Arbitration Centre…"*

49. Clauses 23 and 24 of the Share Charge provide (so far as material):

> *"23. This Charge is governed by Bermuda law.*
> *24. Any dispute controversy or claim arising out of, relating to or in connection with this Charge, including one regarding the breach, existence, validity or termination of this Charge or the consequences of its nullity and any non-contractual or other dispute shall be referred to and finally resolved by arbitration. The arbitration shall be conducted in accordance with the Rules of the Singapore International Centre (SIAC) in effect at the time of the arbitration…"*

50. It is quite apparent that a dispute as to the validity of the Put Option does not fall directly within either of the two arbitration agreements relied upon by Company D in the Settlement Agreement and the Share Charge. The question that remains is whether the validity of the Put Option arises *"in connection with"* the Settlement Agreement and/or the Share Charge.

The pleaded claims

51. In these proceedings Company A claims the right to be registered as the owner of 40,000 common shares in Company C by virtue of the failure of Company D to meet its obligations under the Settlement Agreement and in default thereof by virtue of the exercise of its rights under the Share Charge which was executed in its favour to secure compliance with the terms of Company D's obligations. Company A relies upon the execution of the share transfer instruments in respect of the two events of default

described above. These instruments of transfer were executed under the terms of the Share Charge which permit the Company A Receivers to execute documents of this type as agents of Company D, which is the registered owner, and says that Company C has no right to refuse to register the transfer.

52. Company D has filed evidence in these proceedings setting out the basis of their claim to arbitration and has exhibited the Notice of Arbitration in support of its application for a stay. This amounts to the defence which it has asserted. In effect, Company D says that if Company E's claims in the Company E Arbitration are correct, namely that the Put Option is void for breach of sections 76A (1A) and 76A (1) then the Settlement Agreement and the Share Charge are also void (or are liable to be set aside) on the grounds of a common mistake. This is the substantial issue in the proceedings.

53. The Company D Notice of Arbitration pleads:

> *"22. As a matter of Singapore law, the Put Option is void unless any of the exceptions to section 76 applies.*
> *23. Consequently, as a matter of Singapore law, the validity and enforceability of the Settlement Documents have, in turn, been called into question. That is to say, if the Put Option were void and no obligation to pay the Put Option Consideration exists, then:*
>
> *(a) The Settlement Documents would be void on the ground of common mistake as to the validity of the Put Option; and/or*
>
> *(b) The Settlement Documents would be void under section 76 (1A) (a) (i) of the Companies Act as they are sufficiently proximate to the Put Option under the SSA; and/or*
>
> *(c) The Settlement Documents would be void under section 76 (1A) (a) (i) of the Companies Act as they would themselves be contracts or transactions pursuant to which Company D acquires or purports to acquire its own shares."*

54. It has already been noted that the relevant arbitration agreement is not the arbitration

agreement in the SSA. The substantial dispute must be founded upon the terms of the Settlement Agreement or the Share Charge and within the arbitration provisions set out therein.

The Settlement Agreement

55. Clause 3 of the Settlement Agreement provides:

*"**The Transaction***

Pursuant to the terms and subject to the conditions in this Agreement, the Parties agree that the Transaction shall be effected in accordance with this clause 3.

3.1 The Put Option Consideration and Company C Shares:

(a) The Company shall, on the Company A Completion Date:

(i) transfer the legal and beneficial ownership of 40,000 Company C Shares, representing 40% of the total outstanding shares in the capital of Company C, free from all Encumbrances, together with all rights attaching to them (save for the Company G Rights) to Company A (or its nominee which has or will obtain the relevant Regulatory Approvals set out in Clauses 4.1. (a) and 4.2); and

(ii) execute and deliver a Deed of Release and Discharge to Company A in the form set out in Schedule 2 …to release and discharge Company A from any claim or demand the Company and Company E may have against Company A or any duty, obligation or liability that Company A may have to the Company or Company E in relation to the Put Option Consideration.

(b) ***In consideration of the transfer of the Company C Shares*** *pursuant to Clause 3.1 (a),* ***Company A shall****, on the Company A Completion Date:*

> ***(i)*** ***transfer the Put Option Shares*** *which are legally and beneficially owned by it, free from all Encumbrances, together with all rights attaching to them on the Company A Completion Date,* ***to the Company*** *(or its nominees); and*
>
> ***(ii)*** *execute and deliver a Deed of Release and Discharge to the Company in the form set out in Schedule 1…"*
>
> (Emphasis added)

56. Clause 3 of the Settlement Agreement reflects that although the Put Option Consideration[18] is referred to at the beginning of clause 3.1, the relevant obligation is for Company D to transfer 40,000 Company C shares to Company A, and in return Company A must also transfer the 100 million shares held by Company A in Company D back to Company D.

57. Company A's objection to Company D's claim is that it is contingent on Company E establishing that the Put Option in the SSA is void, but it is clear on a fair reading of the plea at paragraph 23 (c) that there is an independent claim that the transfer of 100 million Company D shares from Company A back to Company D is a breach of section 76 (1A) (a) (i) of the Singapore Companies Law.

58. Whatever objections to the formulation of Company D's claims to avoidance of the Put Option based on Company E's claims there may be, in the Court's judgment Company D's plea in paragraph 23 (c) squarely puts in issue Company A's right to enforce the Settlement Agreement and Company A's enforcement rights under the Share Charge.

59. The Court is not to be too respectful of the way this "matter" has been pleaded. Although the focus of the pleading in the Notice of Arbitration (and Company D's submissions) was the validity of the Put Option which arises under the SSA, it is clear that the validity of the Settlement Agreement itself is directly put in issue.

[18] The Put Option Consideration is a defined term which refers back to the Put Option Consideration in the SSA, which is (in the first instance) US$100 million. The drafting of clause 3 of the Settlement Agreement appears to reflect that the cash was converted into 100 million shares, because the obligation in the Settlement Agreement is to transfer the Put Option Shares.

The points taken regarding the equivocal nature of the plea (i.e. "if" and "would be") do not undermine the substance of the underlying point that is raised. It will be a matter for the arbitration panel not the Court to assess what the appropriate analysis of the pleading and its effect is upon the claims made by Company D.

60. Although there may well be defences to the claim to illegality under Singapore law, it is not appropriate for this Court to embark into an enquiry as to their merits on this application. The parties each adduced evidence of Singapore law contending (on the one side) that the Put Option in the SSA was void and (on the other side) was not void. Neither party relied upon that evidence in making their submissions because the Court would not be able to resolve the differences without cross-examination. The Court has not in fact read any of that evidence and has therefore not taken anything said by either of the experts into account.

61. The Court notes that the express terms of section 76 (1A) state that the contract or transaction is void, not that the term of the contract is void. The Court acknowledges that there may be arguments as to the interpretation of the true meaning of the contract against the factual matrix which may affect the way in which the obligations may be construed.

62. However, on a common sense and practical reading of the Settlement Agreement against the terms of the Notice of Arbitration alongside the terms of the Singapore Companies Law, it seems plain that the issue in the Bermuda proceedings as to Company A's right to be registered as the owner of the 40,000 shares is brought directly into dispute in the arbitration proceedings. This is because the "consideration" for the transfer of the Company C shares is expressed to be the transfer of Company A's 100 million shares in Company D back to Company D.

63. Company A's right to trigger its rights under the Share Charge is directly dependent on Company D's default in transferring the Company C shares upon (i) the failure to pay the costs from the dividend from Company C and/or (ii) the expiration of the Long Stop date for the completion of the transfer of those shares and the transfer of the Company A shares in Company D back to Company D .

64. The Notice of Arbitration given under the terms of the Settlement Agreement. The arbitration provision expressly refers to "*Any dispute arising out of or in connection with this contract, including any question regarding its existence, validity or termination…"* and clearly captures a dispute over whether the Settlement Agreement is tainted by illegality.

65. If the whole consideration for the transfer of the Company C shares to Company A is tainted with illegality, then it is plainly at least arguable that Company A is not entitled to enforce its rights under the Settlement Agreement and/or the Share Charge. This is thesubstance of Company A's claim in the Bermuda proceedings to rectify the register of Company C to reflect the exercise of its security rights under the Share Charge.

No abuse of process

66. Although Company A complains that the point that has been taken by Company D is hypothetical and strategically motivated, there does not appear to be any basis upon which the Court can conclude that Company D's reference to arbitration is an abuse of process.

67. There is no other ground alleged on which the Court would be justified in concluding that it is not in the interests of justice for a stay to be granted.

Interim relief

68. In the event the Court were to grant a stay, Company A submitted that the Court should grant interim relief registering the 40,000 shares in Company C in Company A's name pending the outcome of the arbitration proceedings to preserve the position.

69. This would in my view amount to granting the relief sought in the teeth of the arbitration agreement and to do the very thing the lawfulness of which the arbitration panel is required to determine as a matter of Singapore law.

70. It seems to this Court that to grant such relief would also undermine the policy of the

Bermuda legislature in relation to giving preference to international arbitration where parties have agreed to arbitrate rather than litigate their disputes.

71. Company A asserts that this Court should only grant a stay on terms that Company D undertakes not to diminish the value of the shares in Company C pending the outcome of the dispute. This Court would be reluctant to impose such conditions without clear evidence that there is a substantial risk of this happening.

72. It is also difficult to see what other risk of legal prejudice to Company A would be when their rights to register their title to the shares in Company C will remain intact if Company A's position in the arbitration proceedings is vindicated.

73. It would not therefore, in the Court's view, be in the interests of justice for the Court to intervene until the conclusion of the arbitration proceedings.

74. The Court notes that Company A cannot have any legitimate objection to having its rights determined under the Settlement Agreement and Share Charge by the arbitration panel, having expressly agreed to do so as part of the overall bargain struck under the Settlement Agreement.

Article 8 stay of proceedings

75. Once the Court is satisfied that the relevant dispute is governed by an arbitration provision, Article 8 requires the Court to grant a stay of the proceedings in favour of the arbitration.

76. The Court is satisfied that the substantial matter in dispute in these proceedings is governed by the terms of the arbitration agreement contained in the Settlement Agreement, and in the absence of any overriding reason not to give effect to the terms of the arbitration agreement, the Court hereby grants the stay sought by Company D pending the outcome of those arbitration proceedings.

Costs

77. In recognition of the fact that this Court cannot predict the eventual outcome of the

arbitration proceedings, it seems just in all the circumstances to reserve the costs of the proceedings generally (including the costs of the stay application) to abide the eventual outcome of the arbitration proceedings in the SIAC.

Dated this 19th May 2025

THE HON MR. ANDREW MARTIN
PUISNE JUDGE