Dispute Resolution

Singapore Court Decides on Jurisdiction in SFA-Related Dispute

Introduction

The Singapore legal process allows for service of process outside of Singapore. However, in order to do so, the applicant must demonstrate certain criteria, including a sufficient connection between the dispute and Singapore. In *CA Investment (Brazil) S.A. v Joesley Mendonca Batista and others* (unreported), the Singapore apex court and High Court issued a series of decisions relating to service out of Singapore and the jurisdiction of the court in the context of an unusual dispute relating to claims under the Singapore Securities and Futures Act ("**SFA**").

The Plaintiff, a minority shareholder in a company, brought a derivative action in Singapore against certain directors and shareholders of the company, alleging that they had breached various duties to the company by causing it to contravene certain provisions of the SFA relating to a proposed bond listing. As all the Defendants were foreign parties, the Plaintiff had to obtain leave to serve out of Singapore.

In this series of decisions, the Defendants successfully set aside the service out of jurisdiction, with the High Court ruling that it did not have jurisdiction over the dispute. In back to back, consecutive applications, the Plaintiff thereafter sought leave to appeal against this decision. Both leave applications were denied by both the High Court and the Court of Appeal.

The 3rd to 8th Defendants in this matter were successfully represented by Gregory Vijayendran SC, Leow Jiamin, Devathas Satianathan and Mark Teo of Rajah & Tann Singapore LLP. The 1st, 2nd and 10th Defendants were represented by WongPartnership LLP, the 9th Defendant by LVM Law Chambers LLC, and the 11th Defendant (a nominal defendant, being the company) by Allen & Gledhill LLP.

Brief Facts

The 11th Defendant was a Brazil-incorporated company in the business of pulp production in Brazil. The other Defendants were shareholders (1st, 2nd and 10th Defendants), directors (3rd to 8th Defendants) and the independent auditor (9th Defendant) of the 11th Defendant. All the Defendants were either domiciled in Brazil or were incorporated and had their place of business in Brazil.

The Plaintiff was a minority shareholder of the 11th Defendant. The Plaintiff brought a derivative action in Singapore purportedly on behalf of the 11th Defendant in connection with certain alleged false/misleading statements contained in an offering memorandum that was prepared for the listing of certain proposed bonds on the SGX ("**Proposed Bonds Issuance**"). The Plaintiff submitted that the

alleged misstatements would have caused the 11th Defendant to be in breach of the SFA provisions. It was the Defendant's case, and heavy reliance was placed on this, that the Proposed Bonds Issuance had been aborted even before the suit was commenced.

As the Defendants were all foreign parties, the Plaintiff obtained leave for service of process out of jurisdiction under Order 11 of the Rules of Court ("**ROC**").

Setting Aside of Order for Service Out of Jurisdiction

The Defendants applied to set aside the order granting leave for service out of jurisdiction and were successful before the High Court.

When seeking leave to serve a writ outside of Singapore, it must be shown that there is a good arguable case that the claim falls within one of the grounds set out in Order 11 rule 1 of the ROC. The Defendants submitted that the Plaintiff had failed to show this. The grounds relied on by the Plaintiff all required some connection to Singapore. However, nothing on the facts showed any nexus whatsoever to Singapore save for the tenuous link to the proposed bond issuance that was aborted/abandoned.

On the relevance of the SFA, the Plaintiff contended that the SFA was a forum mandatory statute and only the Singapore courts were in a position to determine whether there has been a breach. However, the Defendants countered that the SFA did not apply on the facts, as the Proposed Bonds Issuance had already been aborted, and the alleged misstatement accordingly had not been made to the relevant Singapore regulatory bodies. In any event, the Defendant also submitted that the statutory provisions relied upon by the Plaintiff in did not support the view that the SFA was a "forum mandatory statute" in the first place.

Vinodh Coomaraswamy J granted the Defendants' application, holding that the Plaintiff had failed to establish that its claims fell within one of the grounds in Order 11 rule 1 of the ROC. In so ruling:-

(a) the High Court accepted the Defendants' submission that the subject matter of the suit was far more closely connected to Brazil;
(b) the High Court found that the connection to Singapore was tenuous as it was merely the jurisdiction in which the bonds were to be listed;
(c) further, regarding the SFA, what was being pursued was not a breach of the SFA but a threatened breach which was no longer even a threat due to the abortion of the Proposed Bonds Issuance; and
(d) finally, the claims regarding the apprehended breach of the SFA did not raise any issue of Singapore public interest or public policy that would outweigh the factors pointing to Brazil as the appropriate forum.

Leave to Appeal

The Plaintiff, dissatisfied with the decision of the High Court, sought leave to appeal against Coomaraswamy J's decision.

The Plaintiff sought to argue during the leave application that the appeal should be heard because (i) it involved questions of general principle to be decided for the first time; or (ii) questions of importance upon which further argument and a decision of a higher tribunal would be to the public advantage. The issues raised by the Plaintiff for this purpose included:

(a) whether the standing of a minority shareholder to bring a derivative action should be determined by the law of the country of incorporation of the company; and
(b) whether the Singapore Courts have the jurisdiction to hear a dispute on the impending dissemination of false and/or misleading information for the purpose of listing bonds in Singapore contrary to the SFA.

The Defendants submitted that the issues raised were not novel questions given existing English case law that was part of Singapore's conflict of law rules, nor were they of the requisite public importance that further argument and an appeal were necessary. In particular, the issue of the purported breach of the SFA did not arise in the first place as the Proposed Bonds Issuance had already been aborted on the facts.

The High Court dismissed the Plaintiff's application. On appeal, the Court of Appeal, similarly denied the Plaintiff leave to appeal against the setting aside of the service out order, finding that the application did not meet the necessary criteria for leave to be granted.

Concluding Comments

The issue of existence of jurisdiction is of foundational importance in modern commercial litigation. It is a first order question (unlike the issue of exercise of jurisdiction). It could make or break a case at its embryonic stage. The dispute's degree of connection with a particular country could be sufficiently dispositive (as this case illustrates) on whether that country has jurisdiction over the dispute or whether proceedings could be served outside jurisdiction on foreign parties. This case also considered the question of whether actual or apprehended contravention of a country's statutes are sufficient to tie a dispute to that country or remains too slender a thread.

For further queries, please feel free to contact our team below.

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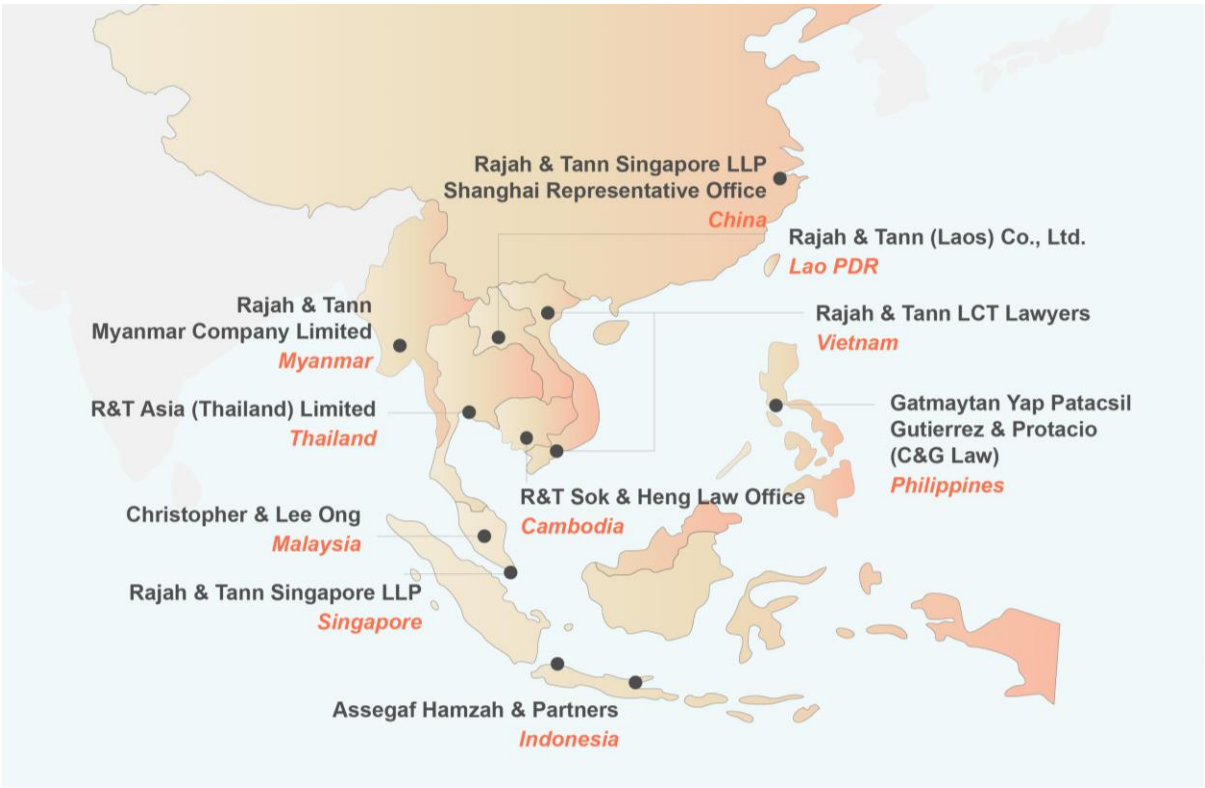

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