

## EXCLUSIVE JURISDICTION CLAUSES IN THE CONTEXT OF A MULTI-CONTRACTS DISPUTE SCENARIO

The Appellate Division of the High Court accepts the “Extended *Fiona Trust* Principle” as being part of Singapore Law

### Introduction

In a situation where Agreement A contains an exclusive jurisdiction clause (“EJC”), and a dispute arises out of Agreement B, is the EJC in Agreement A wide enough to cover the dispute arising from Agreement B?

In the landmark decision of *Allianz Capital Partners GmbH, Singapore Branch v Goh Andress* [2023] SGHC(A) 18, the Appellate Division of the High Court (“ADHC”) answered the question above by applying the “Extended *Fiona Trust* Principle” as formulated in *Terre Neuve SARL (a company incorporated in France) and others v Yewdale Ltd and others* [2020] EWHC 772 (Comm) (“*Terre Neuve*”). This is the first reported decision in Singapore considering and adopting the Extended *Fiona Trust* Principle.

This case update provides a summary of the ADHC’s decision.

### Brief Facts

The Respondent, Ms Andress Goh, was previously employed by the Appellant (“ACP-S”), the Singapore branch of a German company, Allianz Capital Partners GmbH (“ACP”). The terms of the Respondent’s employment were set out in her employment contract with ACP-S (“**Employment Contract**”). The Employment Contract contained an EJC in favour of Singapore.

As a result of her various contributions to ACP-S, the Respondent was invited to participate in ACP’s Incentive Plan for Indirect Private Equity Investments dated October 2018 (“LTIP”). The LTIP did not contain an EJC but contained a choice of law clause in favour of German Law.

Under the terms of the LTIP, participants would be granted an incentive award based on the performance of investments made by ACP in that respective year. Pursuant to Clause 5.1.2 of the LTIP, the incentive award would vest by 25% each year on an annual basis and would fully vest on December 31 of the third year following the year to which the incentive award pertains. Accordingly, the incentive awards given to the Respondent for the years 2018, 2019 and 2020 would fully vest on 31 December 2021, 31 December 2022 and 31 December 2023 respectively.

In the event a participant of the LTIP leaves employment, the participant would be classified as either a Good Leaver, Normal Leaver or Bad Leaver for the purposes of determining whether he or she is allowed to keep his or her allocated incentive award. A Good Leaver will be entitled to keep all vested incentive awards and all unvested incentive awards will vest fully immediately. A Normal Leaver will be entitled to keep all vested incentive awards but loses all unvested incentive awards. A Bad Leaver will be obliged to repay all incentive awards irrespective of whether they are vested or unvested. The Respondent left ACP-S in December 2021 and was accorded Normal Leaver status. At the time of her departure, her 2018, 2019 and 2020 incentive awards had yet to fully vest.

ACP-S took out proceedings in Singapore and sought, *inter alia*, a declaration that the Respondent is not entitled to Good Leaver status and is a Normal Leaver for the purposes of the LTIP.

The Respondent applied to stay the Singapore proceedings on the basis that Germany is the more appropriate forum to hear and decide the disputed issues which arose from the LTIP. ACP-S resisted the application on the basis *inter alia* that the EJC in the Employment Contract is wide enough to cover

disputes arising out of the LTIP. The application was dismissed by the Assistant Registrar at the first instance and subsequently allowed on appeal before a High Court Judge. Thereafter, ACP-S filed an appeal to the ADHC.

### ADHC's Decision

The ADHC had to determine whether the EJC in the Employment Contract was wide enough to apply to disputes arising under the LTIP. In doing so, the ADHC accepted the Respondent's argument that the "Extended *Fiona Trust* Principle" ought to apply as part of Singapore law and framed the principle as follows:

- (a) As a matter of contractual interpretation, the wording of the clause in Contract A must be fairly capable of applying to disputes in Contract B.
- (b) The Extended *Fiona Trust* Principle normally applies where:
  - (i) the parties to Contract A and Contract B are the same;
  - (ii) Contract A and Contract B are interdependent;
  - (iii) Contract A and Contract B were concluded at the same time as part of a single package or transaction; and/or
  - (iv) Contract A and Contract B dealt with the same subject matter (if concluded at different times).

The ADHC stressed that the factors set out above only serve as guides to ascertain the parties' intentions as to how disputes arising under separate agreements should be resolved. Ultimately, the outcome that results from the application of the "Extended *Fiona Trust* Principle" should be one that the parties, as rational business people, had sensibly envisaged in the context of their commercial relationship.

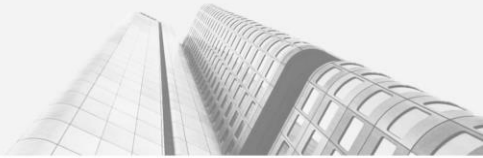
Applying the "Extended *Fiona Trust* Principle", the ADHC found that the EJC in the Employment Contract was wide enough to apply to disputes arising under the LTIP.

**First**, the wording of the EJC in the Employment Contract was capable of applying to disputes arising under the LTIP. The phrase "*any dispute*" in the EJC was wide enough to cover disputes arising under the LTIP and there was no reason to limit the phrase "*any dispute*" to disputes arising under the Employment Contract.

**Second**, the ADHC determined that while the Employment Contract and LTIP are separate agreements, they are interdependent agreements which were negotiated as part of the same overall package and should be read holistically. This was one of the most significant factors. The ADHC found that both the Employment Contract and the LTIP pertain to the employment relationship between the Respondent and ACP-S. Further, the source of the Respondent's right to participate in the LTIP is found in the Employment Contract. Accordingly, although the LTIP was signed at a later point in time, the LTIP was arguably part of the compensation package negotiated at the time of signing the Employment Contract. It is also clear that the Respondent's entitlement to participate in the LTIP was conditional upon her continued employment with ACP-S.

**Third**, both the Employment Contract and the LTIP traverse the same subject matter, i.e., the Respondent's compensation package. The ADHC noted that for the purposes of the "Extended *Fiona Trust* Principle", it should suffice that the two agreements pertain to the same overall package or subject matter. There is no need for the subject matter of both agreements to be identical.

**Finally**, the ADHC found that the Employment Contract and the LTIP were concluded between the same parties. The ADHC took the view that ACP-S, being a local branch office, should be considered an extension of its foreign parent company and not a separate legal entity. Thus, it was not material that the Employment Contract was expressed as being between ACP-S and the Respondent, while the LTIP was expressed to have been concluded between ACP and the Respondent.



As a result, the ADHC found that the dispute arising out of the LTIP fell within the scope of the EJC in the Employment Contract and there was no strong cause to depart from it. Therefore, the stay of proceedings sought by the Respondent was not granted.

*The Respondent was represented in the High Court and Appellate Division of the High Court by Pradeep Pillai, Simren Kaur Sandhu and Wong Yong Min of PRP Law LLC.*



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