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Injunctive and disclosure orders in aid of foreign proceedings: Classroom Investments Inc.

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In the recent decision in *Classroom Investments Inc. v (1) China Hospitals Inc. and (2) China Healthcare Inc.* (Smellie CJ presiding) the Grand Court of the Cayman Islands granted the Plaintiff's application for a freezing injunction in aid of foreign proceedings in Hong Kong. It is the first order made pursuant to the recently enacted section 11A of the Grand Court Law (2008 Revision), which places on a statutory footing the jurisdiction of the Grand Court to grant interim relief in aid of foreign (ie non–Caymanian) proceedings.

Facts

The Plaintiff purchased shares in the First Defendant, who represented that it had entered into binding agreements to acquire a number of hospitals and that it would make best endeavours to achieve an IPO. However, the relevant contracts were in fact entered into by companies in the Second Defendant's structure. The Plaintiff had no interest whatsoever in the Second Defendant. The Plaintiff brought allegations of fraud against a number of companies, including the Defendants, in relation to the application and misappropriation of its subscription monies.

The Defendants were incorporated in the Cayman Islands. The Plaintiff obtained a worldwide freezing injunction in the Hong Kong Court against various other defendants, but not against these Defendants as they were not subject to the Hong Kong Court's personal jurisdiction. The Plaintiff sought freezing relief in order to protect its tracing claims, ensure that the structure that the Plaintiff thought existed remained in situ and, perhaps most importantly, provide for disclosure of information by the Defendants.

Threshold

Section 11A of the Law adopts different wording to the test in the comparable English legislation. Under section 11A, the Grand Court may refuse an application for the appointment of a receiver or the grant of interim relief, if, in its opinion, it would be unjust or inconvenient to grant the application; the wording under the English provision is inexpedient. The Grand Court's observations on the effect of this difference in wording were not entirely consistent. On one hand it found that the section 11A approach would in substance, be the same and that it invoked a test of fairness and convenience to similar effect as the English provision. Yet, it later commented that the section 11A wording could be regarded as possibly broader, although nothing turned on this difference on the particular facts of this case. It might be open for future applicants for section 11A freezing relief to argue that the test in Cayman is broader. That said, the exercise will always be fact sensitive and it is therefore unlikely that the semantics of the legal test will materially influence outcomes.

English guidance

The Grand Court, unsurprisingly, relied heavily on English rulings in relation to the factors relevant to the inexpediency test.[1] Interim relief should not be limited to that which would be available in the Court trying the substantive dispute. Factors weighing against interim relief might include: if it would obstruct or hamper the management of the case by the primary court, if it would give rise to risk of conflicting, inconsistent or overlapping orders, or if the primary court declined to grant interim relief. It might weigh in favour of interim relief if the defendant is present in the country in which the application has been brought.

The Grand Court also summarised the relevant principles provided by Neuberger J (as he then was) in *Ryan v Friction Dynamics*.[2]

- The domestic court should always exercise caution in freezing order applications.
- Particular caution should be exercised in freezing order applications in aid of foreign proceedings.
- Yet the domestic court should not be timid if satisfied that good grounds exist.
- The basic requirements of a domestic freezing order still need to be satisfied eg good arguable case, real risk of dissipation.
- It weighed against granting a freezing order where the foreign court had refused to do so.
- The existence of a worldwide freezing order did not prevent the domestic court granting an overlapping order.
- The domestic court should expect to be given cogent reasons to justify granting an overlapping order given that such orders lead to increased costs, time and double jeopardy risk.
- Where an overlapping order is granted it is sensible to indicate which court is to have primary enforcement responsibility.

Where an overlapping order is granted the domestic court should avoid inconsistency with the terms of the foreign court's order.

Decision

The Plaintiff met the section 11A gateway. The Grand Court had no concerns in relation to overlapping orders, double jeopardy or forum shopping. Interestingly, it was not relevant whether the Defendants' assets were based in the Cayman Islands – disclosure orders for such information were often the most valuable part of the relief sought. The fact that no injunctive relief was obtained in Hong Kong against these Defendants was not a relevant consideration; it would only be relevant if such an application had been made but refused by the foreign court (although this point was by no means settled in the case law).The Grand Court ultimately applied the domestic principles for considering freezing relief and granted the Plaintiff's application.

Conclusion

The Grand Court's decision in Classroom Investments Inc. is helpful because it provides the first indication of how the Cayman Courts will apply section 11A of the Law when they are faced with an application for an injunction in aid of foreign proceedings.

For further information regarding section 11A and freestanding injunctions, please refer to our legal update 'Continuing freestanding freezers – further jurisprudence on section 11A of the Grand Court Law'.

[1] *Credit Suisse v Cuoghi* [1998] QB 818; *Refco Inc & Anor v Eastern Trading Co & Ors* [1990] 1 Lloyd's Rep 159.

[2] The Times 14 June 2000 – Transcript.

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