

Employment & Benefits

Jurisdiction Clauses in Employment Contracts and Related Employment Documentation: Application of the Extended Fiona Trust Principle in Singapore

Can an exclusive jurisdiction clause in one contract, as a matter of construction, apply to disputes arising out of another contract? This was the key question considered by the Appellate Division of the High Court in *Allianz Capital Partners GmbH, Singapore Branch v Goh Andress* [2023] SGHC(A) 18.

The answer centred around whether what has been termed the "Extended Fiona Trust Principle" ("**Principle**") should be accepted as a matter of Singapore law. In essence, the Principle states that:

- (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 Principle normally applies where:
 - the parties to Contract A and Contract B are the same;
 - Contract A and Contract B are interdependent;
 - Contract A and Contract B were concluded at the same time as part of a single package or transaction; and/or
 - Contract A and Contract B dealt with the same subject matter (if concluded at different times).

In the present case, the respondent ("**Ms Goh**") was previously employed by the appellant ("**ACP-S**"), which was the Singapore branch of a German company, via an Employment Contract. The Employment Contract contained an exclusive jurisdiction clause ("**EJC**") which provided that the Singapore courts had exclusive jurisdiction over "any dispute". The Employment Contract also provided that Ms Goh "may" participate in a carried interest programme, which she did by entering into further agreements (collectively, "**LTIP**"). The LTIP provided for German law to be the governing law, but did not itself contain a dispute resolution clause.

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After Ms Goh's resignation, a dispute arose between her and ACP-S over her entitlements under the LTIP. The issue presently before the AD was whether the EJC in the Employment Contract applied to the present dispute relating to the LTIP.

The AD was of the view that there was good reason to accept the Principle, as the factors comprising the Principle constituted a useful litmus test of whether the parties intended for a jurisdiction clause in one contract to encompass disputes arising out of another contract. However, the AD emphasised that the factors comprising the Principle only serve as guides to ascertain the parties' intentions as to how disputes arising under separate agreements should be resolved. In the final analysis, the question that must be asked was whether the outcome that results from the application of the Principle was one that the parties, as rational business people, had sensibly envisaged in the context of their commercial relationship.

Applying the Principle, the AD found that it must have been the case that the parties intended the EJC to apply to disputes arising out of the LTIP. It was unlikely that the parties had intended for disputes arising out of their relationship to be fragmented across multiple jurisdictions, in circumstances when Ms Goh had been based out of Singapore at all material times and likely had a reasonable expectation that she would be able to resolve all disputes pertaining to her employment in Singapore. In particular, the AD considered the four factors and found that:

- (a) The wording of the EJC was capable of applying to disputes under the LTIP, as it stated that "Singapore shall be the sole forum to which any dispute shall be referred to" [emphasis added].
- (b) The Employment Contract and the LTIP were interdependent agreements, as they clearly pertained to the employment relationship between Ms Goh and ACP-S. Moreover, the Employment Contract contemplated the parties' entry into an agreement such as the LTIP, showing that these were interrelated and interconnected agreements.
- (c) The Employment Contract and the LTIP concerned the same subject matter, namely Ms Goh's compensation package.
- (d) The Employment Contract and the LTIP were concluded between the same parties.

The AD consequently found in favour of ACP-S and allowed the appeal. However, what was left open (as the specific point and issue did not have to come up for consideration by the AD, based on the specific facts of the case), is whether the Principle would apply had both the Employment Contract and the LTIP each contained a different dispute resolution clause.

For more information on structuring and applying the appropriate jurisdiction and dispute resolution clauses for your employment contracts and documentation, please contact our Employment Law partners featured [here](#).

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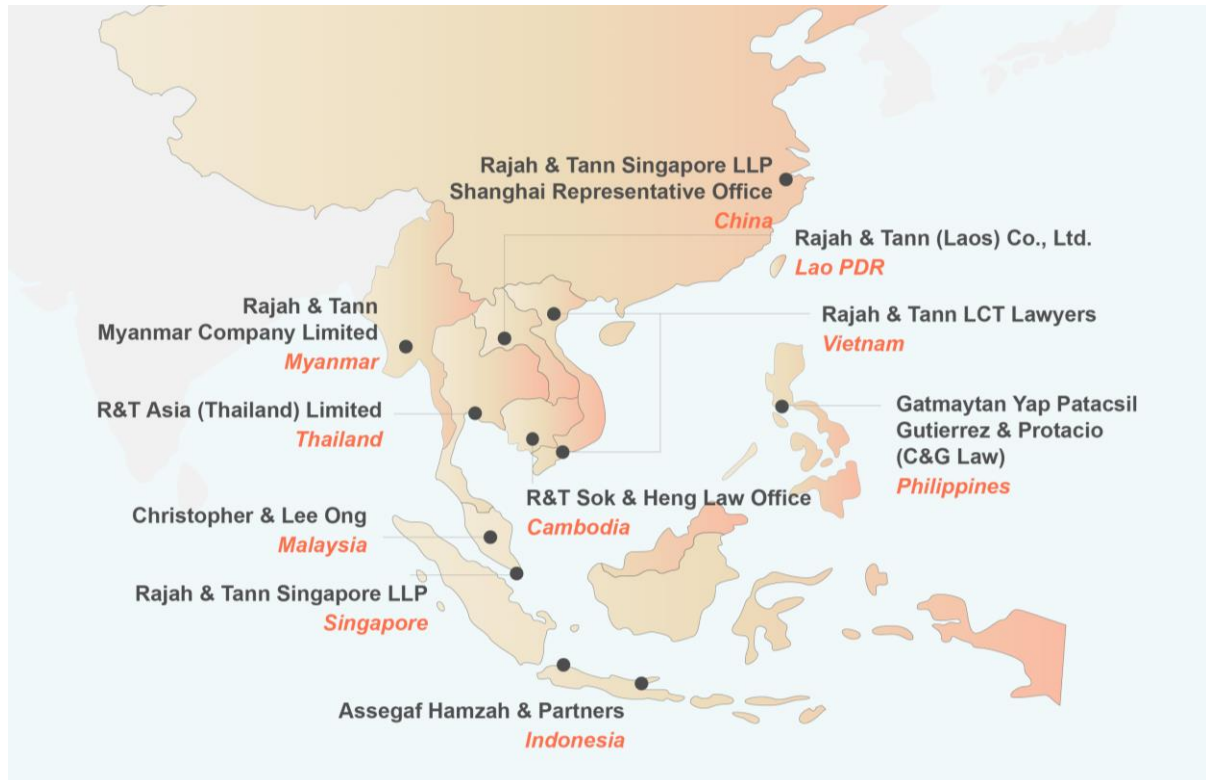
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