Young ITA Newsletter

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Singapore

SGHC Rules on what constitutes a "Step in the Proceedings" – Analysing Beltran v. Terraform

The General Division of the High Court of the Republic of Singapore (**SGHC**) in the matter of [*Beltran, Julian Morena and another v. Terraform Labs Pte Ltd and others* [2023] SGHC 340](#), recently dismissed an appeal against the decision of the Assistant Registrar denying a stay in favor of arbitration. This ruling is significant on what actions constitute a "step in the proceedings," indicating submission to Singapore courts' jurisdiction.

Background to the Dispute

Terraform Labs (**Terraform**) is a Singapore-incorporated company in the business of developing software and applications. Terraform operate the Terra blockchain and creates apps for the broader Terra Ecosystem, which provides a platform for Terraform's development and sale of decentralized financial products and services – the central feature being TerraUSD, the cryptocurrency tokens issued by Terraform among the several projects and platforms built atop the Terra blockchain in Anchor Protocol. 'Anchor Protocol' is a lending and borrowing platform that allows users to stake TerraUSD in consideration for promised returns calculated on an annualized yield basis. The growth of the Terra Ecosystem was supported by Luna Foundation Guard Ltd (**Luna**) through the building of reserves to buttress the stability of TerraUSD.

Julian Moreno Beltran and Douglas Gan, on behalf of 375 claimants who had purchased TerraUSD, filed a class action lawsuit against Terraform, Luna and the founders of Terraform and Anchor Protocol. The claimants sought relief against the defendants for inducing them through misrepresentations to purchase TerraUSD, stake it on the Anchor Protocol and continue to hold on to their staked TerraUSD despite a sharp

decline in value. The claimants assert that as a result, they suffered significant damages totalling close to US$66 million.

Terraform's and the Anchor Protocol's websites contained clauses providing for disputes to be resolved exclusively by arbitration seated in Singapore and conducted pursuant to the SIAC Rules. Terraform's 'terms of use' also stated that there shall be no authority for any claims to be arbitrated on a class or representative basis.

Terraform filed a pre-case conference questionnaire and its defence. The defence addressed Terraform's jurisdictional challenge, its defence on the merits of the claims and counterclaim for various declarations. Pertinently, the defence also contained a reservation that it was filed 'without prejudice' to Terraform's contention that the court had no jurisdiction and that its filing was "not to be construed as a submission to the jurisdiction of the Court". The other defendants filed similar defences.

Following the filing of the defence, Terraform, its founder and Luna submitted a request for a stay of the lawsuit. The Assistant Registrar denied Terraform's request for a stay, citing the company's inability to establish a sufficient presumption that it and the Claimants had a legitimate arbitration agreement. As an alternative, the Assistant Registrar ruled that Terraform had already engaged in several steps of the proceedings and had thus submitted to the court's jurisdiction, even if it could be demonstrated that a valid arbitration agreement prima facie existed.

Taking a Step in the Proceedings

The SGHC dismissed the Defendants' appeal and found that Terraform had taken steps in the proceedings amounting to submission to the jurisdiction of the Singapore courts.

Under Section 6(1) of Singapore's International Arbitration Act 1994 (IAA), any party to an arbitration agreement may seek a stay of proceedings before "delivering any

pleading (other than a pleading asserting that the court does not have jurisdiction in the proceedings) or taking any other step in the proceedings." The question before the SGHC was whether Terraform had taken steps in the court proceedings within the meaning of Section 6(1) of the IAA which would preclude it from obtaining a stay in favour of arbitration. The SGHC analyzed various precedents and noted that in assessing whether an act constitutes a "step in the proceedings", the court should consider the actions of the defendant as a whole and in "a practical and commonsensical way."

According to the ruling of the SGHC, some activities do not qualify as a "step in the proceedings," such as requests for facts only for the purpose of determining jurisdiction. Nonetheless, it is believed that defendants who use the legal system to challenge the proceedings or who seek information that suggests a defence have taken this action. In some situations, applications regarding the propriety of proceedings cannot be in conflict with a jurisdictional challenge. For example, a striking-out application, as demonstrated in *Maniach Pte Ltd v. L Capital Jones Ltd and another* [2016] 3 SLR 801, may not be considered a "step in the proceedings" if grounded in a preliminary issue that must be resolved before addressing jurisdictional concerns.

> " The SGHC found that this substantive defence, in addition to other unrelated procedural processes, contradicted Terraform's jurisdictional argument, even though it included an unambiguous reservation of rights. "

By filing its Pre-Case Conference Questionnaire and its Defence, Terraform had contested the merits of the plaintiff's allegations in addition to bringing up jurisdictional concerns. The SGHC found that this

substantive defence, in addition to other unrelated procedural processes, contradicted Terraform's jurisdictional argument, even though it included an unambiguous reservation of rights.

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