IN THE APPELLATE DIVISION OF
THE HIGH COURT OF THE REPUBLIC OF SINGAPORE

[2023] SGHC(A) 18

Civil Appeal No 75 of 2022

Between

Allianz Capital Partners
GmbH, Singapore Branch

… *Appellant*

And

Andress Goh

… *Respondent*

In the matter of Originating Summons No 1215 of 2021

Between

Allianz Capital Partners
GmbH, Singapore Branch

… *Plaintiff*

And

Andress Goh

… *Defendant*

JUDGMENT

[Conflict of Laws — Choice of jurisdiction — Exclusive]
[Conflict of Laws — Natural forum]

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v
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Appellate Division of the High Court — Civil Appeal No 75 of 2022
Kannan Ramesh JAD and Debbie Ong Siew Ling JAD
10 November 2022

8 May 2023

Kannan Ramesh JAD (delivering the judgment of the court):

Introduction

1 When would a jurisdiction clause in one contract, as a matter of construction, apply to disputes arising out of another contract? This is the key question in the present appeal and gives us the opportunity to consider what has been termed the "Extended *Fiona Trust* Principle" (the "Principle").

2 We are of the view that the Principle ought to be accepted as a matter of Singapore law. Applying the Principle to the present appeal, we find that the dispute between the parties is subject to an exclusive jurisdiction clause in favour of Singapore. We therefore allow the appeal and set aside the Judge's order below in HC/OS 1215/2021 ("OS 1215") granting a stay of the proceedings.

Facts

The parties

3 The factual background to the present appeal can be found in the grounds of decision of the Judge in *Allianz Capital Partners GmbH, Singapore Branch v Goh Andress* [2022] SGHC 266 (the "GD") at [1]–[14]. We highlight the salient aspects below.

4 The appellant ("ACP-S") is the Singapore branch of a German company, Allianz Capital Partners GmbH ("ACP"). ACP is a member of the Allianz Group and is an asset manager for alternative equity investments. The respondent, Ms Andress Goh ("Ms Goh"), is a Singaporean citizen who was based in Singapore at all material times. Ms Goh was previously employed by ACP-S (and its predecessor entity) from May 2006 to December 2021.

5 The terms of Ms Goh's employment with ACP-S were contained in two documents, as follows:

(a) an employment contract between Ms Goh and ACP-S, dated 19 October 2009 (the "Employment Contract"); and

(b) the "Allianz Global Investors – Employee Handbook for Singapore" (version 1.0) (the "Employee Handbook"), which was incorporated by reference into the Employment Contract by cl 2.9 of the Employment Contract.

6 We set out the relevant provisions of the Employment Contract below. First, cl 2.5 of the Employment Contract provides that Ms Goh "may" participate in carried interest programmes, as follows:

> 2.5 Carried Interest

> The EMPLOYEE may participate in the carried interest program of ACP subject to the details to be provided in separate agreements and notices by ACP with regard to such carried interest program.

7 Further, cl 7.3 provides that the Employment Contract is governed by Singapore law, and that the Singapore courts have exclusive jurisdiction over "any dispute":

> 7.3 Singapore law shall be the sole and applicable law of this Agreement and any dispute arising from it. The Courts in Singapore shall be the sole forum to which *any dispute* shall be referred to and Singapore shall be the sole jurisdiction for such determination.
>
> [emphasis added]

We refer to the exclusive jurisdiction clause in cl 7.3 as the "EJC".

8 The Employment Contract also contains an entire agreement clause, as follows:

> 7.5 This Agreement supersedes any prior agreements, representations and promises, whether written, oral, express or implied between the parties on specific points explicitly mentioned in this agreement and constitutes the full and exclusive agreement between the EMPLOYEE and the COMPANY with respect to the employment.

The Incentive Plan and the LTIP

9 During her employment with ACP-S, Ms Goh was selected to participate in the Allianz Capital Partners Incentive Plan for Indirect Private Equity Investments (the "Incentive Plan") from 2018 to 2020. The Incentive Plan was administered by ACP, subject to terms and conditions contained in a document titled "Allianz Capital Partners Incentive Plan for Indirect Private Equity Investments" (the "Plan Terms"). It is common ground between the parties that Ms Goh's participation in the Incentive Plan was pursuant to cl 2.5 of the

Employment Contract, and that the Incentive Plan was a "carried interest program" within the meaning of cl 2.5. The Judge also proceeded on this basis: GD at [37]. Thus, cl 2.5 of the Employment Contract provided for Ms Goh's participation in carried interest programmes such as the Incentive Plan, the details of which were to be encapsulated in separate agreements and notices issued by ACP.

10 The purpose of the Incentive Plan was to provide eligible directors and/or employees of ACP and Allianz Capital Partners of America Inc ("Plan Participants") with the opportunity to participate in the returns generated by investments made by ACP in the private equity sector. Under the Incentive Plan, certain investments made by ACP within a calendar year (a "Vintage Year") were pooled and aggregated. Based on the performance fees received by ACP in respect of those investments, ACP had the discretion to allocate to each Plan Participant a certain percentage of the performance fees for that Vintage Year (the "Incentive Award"). Each Plan Participant would be notified by, *inter alios*, ACP of an Incentive Award through an allocation letter (an "Award Notice") in accordance with the template set out in Schedule 2 of the Plan Terms. To acquire the Incentive Award, the Plan Participant had to sign the Award Notice acknowledging that he/she agreed to be bound by the Plan Terms and that he/she accepted the Incentive Award.

11 Ms Goh was offered Incentive Awards in 2018, 2019 and 2020. Notably, while cl 2.5 of the Employment Contract and cl 3.2 of the Plan Terms provide for the Award Notice to be issued by ACP, the Award Notices that were issued to Ms Goh were on ACP-S's letterhead. Ms Goh duly signed the respective Award Notices, thereby agreeing to be bound by the Plan Terms. We refer to the agreements formed in relation to each Award Notice collectively as the "LTIP".

12 Clause 5.1.2 of the Plan Terms provides that the Incentive Award for each Vintage Year vests annually in tranches of 25% over a period of four years. If a Plan Participant ceases employment before the vesting period ends, his/her entitlement to the unvested and vested Incentive Award(s) would depend on whether he/she is classified as a "Good Leaver", "Normal Leaver" or "Bad Leaver". In this regard, cl 5.2 of the Plan Terms is salient:

> 5.2 Leaver Treatment
>
> If a Plan Participant Leaves Employment during the Vesting Period, the following shall apply:
>
> 5.2.1 If the Plan Participant Leaves Employment and is a Good Leaver by any other reason than death, the Plan Participant keeps all vested Incentive Awards with regard to a Vintage and *all unvested Incentive Awards of such Leaver fully vest immediately*. If a Plan Participant is a Good Leaver by reason of death, all her or his unvested Incentive Awards fully vest immediately, the vested Incentive Awards remain unaffected and Clause 3.5 applies.
>
> 5.2.2 If the Plan Participant Leaves Employment and is a Normal Leaver, the Plan Participant keeps all Incentive Awards with regard to a Vintage vested at the date the Plan Participant Leaves Employment, but *loses all unvested Incentive Awards*.
>
> 5.2.3 If the Plan Participant Leaves Employment and is a Bad Leaver, the Plan Participant (i) loses with effect from (and including) the occurrence of the Bad Conduct Event *all Incentive Awards irrespective of whether they are vested or unvested* and (ii) is obliged to repay to the Company the net amount of all Plan Payments (i.e. amount after any deduction of income tax and employee's social security contributions required by law in accordance with Clause 4.3) she or he has received since the Bad Conduct Event because the Company was not aware of the Bad Conduct Event. However, such repayment obligation only exists for Plan Payments received by the Bad Leaver during the time period of five years from (and including) the Bad Conduct Event.
>
> …
>
> [emphasis added]

13 The terms "Good Leaver", "Normal Leaver" and "Bad Leaver" are defined in cl 1.2 of the Plan Terms as follows:

> '**Bad Leaver**' means any Plan Participant who (i) ceases to be employed with the Company or ACP US by reason of a Bad Conduct Event or (ii) Leaves Employment with the Company or ACP US and has committed a Bad Conduct Event, provided that the Company or ACP US discovers within five years from (and including) the day the Plan Participant Leaves Employment with the Company or ACP US, respectively, that such Plan Participant committed such Bad Conduct Event;
>
> …
>
> '**Good Leaver**' means any Plan Participant who Leaves Employment either (i) by reason of death, disability, retirement or termination by the employer because of downsizing, re-organization or termination of its business, or (ii) – in respect of any ACP Investment Professional – the ACP Management Board, in its discretion, deems the respective Plan Participant a Good Leaver, such discretion being subject to the approval of the ACP Compensation Committee, or (iii) – in respect of any Eligible ACP Board Member – both the ACP Competent Body and the AllianzGI Compensation Committee, in their discretion, deem the respective Plan Participant a Good Leaver. The ACP Competent Body may delegate the decision to the AllianzGI Compensation Committee that then decides – subject to the approval of the ACP Competent body – in its discretion;
>
> …
>
> '**Normal Leaver**' means any Plan Participant who Leaves Employment and is neither a Good Leaver nor a Bad Leaver;
>
> …
>
> [emphasis in bold in original]

14 Clause 8.8 of the Plan Terms is an entire agreement clause, while cl 8.9 provides that the LTIP is governed by German law, as follows:

> 8.8 Entire Agreement
>
> This Plan constitutes the entire agreement and supersedes any previous agreement between the parties relating to the subject matter of this Plan.
>
> 8.9 Governing law

> This Plan and all Incentive Awards granted under it shall be governed by and construed in accordance with the law of the Federal Republic of Germany, excluding the application of the UN Convention on Contracts for the International Sale of Goods (CISG) and the German conflicts of laws rules.

Ms Goh's resignation

15 On 18 June 2021, Ms Goh informed her immediate superiors in Allianz Global Investors by e-mail of her intention to retire and therefore to resign from employment. She was 56 years old at the time. On 25 June 2021, ACP's Human Resources and Compensation department informed Ms Goh that in view of her decision to terminate her employment and her age, she had been deemed a "Normal Leaver" for the purposes of the LTIP. In the correspondence that followed, Ms Goh expressed her concern that she had been deemed a "Normal Leaver". As she was "genuinely retiring", Ms Goh was of the view that she ought to be deemed a "Good Leaver" instead. ACP's position, however, was that Ms Goh had not met the requirements under the LTIP for being a "Good Leaver". The obvious implication for Ms Goh in being classified as a "Normal Leaver" was that she would not be entitled to her unvested Incentive Awards. A "Good Leaver" classification would not have that consequence.

16 On 26 November 2021, ACP-S commenced OS 1215 seeking, *inter alia*, declarations that:

(a) Ms Goh was not retiring under the Employment Contract or the LTIP;

(b) Ms Goh did not meet any of the requirements to be considered a "Good Leaver" under the LTIP and was not entitled to "Good Leaver" status for the purposes of the LTIP; and

(c) Ms Goh was a "Normal Leaver" for the purposes of the LTIP.

17 In the supporting affidavits filed with OS 1215, ACP-S explained that Ms Goh had not met the requirements of a "Good Leaver", as (a) she had not reached the retirement age of 62 years specified in the Employee Handbook when she resigned; and (b) she had not been deemed a "Good Leaver" at the discretion of the ACP Management Board and the ACP Compensation Committee in accordance with the terms of the LTIP.

Proceedings below

18 In response to OS 1215, Ms Goh filed HC/SUM 308/2022 ("SUM 308") seeking a stay of proceedings on the ground that Germany was the more appropriate forum to hear the dispute in OS 1215. ACP-S resisted SUM 308. It claimed that the dispute in OS 1215 fell within the scope of the EJC and that there was no strong cause why a stay should be granted in breach of the EJC. Alternatively, if the dispute in OS 1215 fell outside the scope of the EJC, ACP-S contended that applying the test in *Spiliada Maritime Corporation v Cansulex Ltd* [1987] AC 460 (the "*Spiliada* test"), the relevant connecting factors pointed to Singapore as the more appropriate forum.

19 On 14 April 2022, an Assistant Registrar (the "AR") dismissed SUM 308. The AR was of the view that the EJC should be given a broad or generous interpretation, such that it covered the dispute in OS 1215. Further, Ms Goh had not shown strong cause to depart from the EJC, and in any event, the connecting factors did not point clearly toward Germany as the more appropriate forum.

20 Ms Goh appealed against the AR's decision in HC/RA 101/2022 ("RA 101"). On 16 August 2022, the Judge allowed the appeal. The Judge began by considering if there was a good arguable case that the dispute in

OS 1215 was one "arising from" the Employment Contract, such that it fell within the scope of the EJC. In the Judge's view, the core of the dispute centred on the parties' differing interpretations of the term "retirement" as used in the LTIP, and the manner in which ACP had exercised its discretion to determine Ms Goh's Leaver status. The dispute in OS 1215 thus arose out of the LTIP, which was a "separate agreement, distinct and independent from the Employment Contract". The EJC therefore did not apply to the dispute in OS 1215: GD at [23]–[27].

21 The Judge next considered ACP-S's argument that if the dispute in OS 1215 arose out of the LTIP, the EJC should be given a broad and generous interpretation to cover disputes under the LTIP on an application of the Principle. As explained at [42] below, the Principle provides that in certain circumstances, a jurisdiction clause in one contract may be read as applying to a dispute arising from *another* contract. While the Judge accepted that the Principle could apply as a matter of principle, the Judge found that on the facts of the present case, the EJC properly construed did not apply to a dispute arising from the LTIP. Accordingly, there was no good arguable case that the dispute in OS 1215 fell within the EJC: GD at [28]–[45].

22 Turning to the *Spiliada* test, the Judge found that the relevant connecting factors pointed to Germany as the more appropriate forum. Significantly, the dispute in OS 1215 was governed by German law, pursuant to the choice of law clause in the Plan Terms (see [14] above). The fact that (a) members of the ACP Management Board and the ACP Compensation Committee were compellable in Germany but not in Singapore; and (b) the administration of the Incentive Plan was likely conducted out of ACP's headquarters in Germany, were also factors that indicated Germany to be the more appropriate forum. Accordingly,

the Judge allowed RA 101 and granted a stay of the proceedings in OS 1215: GD at [46]–[72].

The parties' cases

23 ACP-S appeals against the Judge's decision. ACP-S makes four main arguments in the present appeal:

(a) First, ACP-S submits that on a proper construction of the EJC, there is a good arguable case that the EJC applies to the dispute in OS 1215. In this regard, as we discuss further below at [26], ACP-S accepts the Judge's finding that the Employment Contract and the LTIP are separate agreements, and that the dispute in OS 1215 arises out of the *LTIP* rather than the Employment Contract. Nevertheless, ACP-S highlights that the wording of the EJC is not limited to disputes "arising from" the Employment Contract, and instead applies to "any dispute". The EJC is therefore sufficiently broad to apply to disputes arising out of the LTIP.

(b) Second, ACP-S submits that applying the Principle, the Judge should have accorded the EJC a broad interpretation, such that it covers the dispute in OS 1215.

(c) Third, ACP-S submits that Ms Goh has not shown strong cause why the proceedings in OS 1215 should be stayed in contravention of the EJC.

(d) Finally, and in any event, ACP-S takes the position that applying the *Spiliada* test, the Judge should have found Singapore to be the more appropriate forum.

24 Ms Goh submits that the Judge's reasoning should be upheld, and that this appeal should therefore be dismissed.

Issues to be determined

25 Based on the foregoing, the following issues arise for determination:

(a) Does the dispute in OS 1215 fall within the scope of the EJC?

(b) If (a) is answered in the affirmative, is there strong cause why the proceedings in OS 1215 should be stayed in contravention of the EJC?

(c) If (a) is answered in the negative, what is the more appropriate forum for the dispute in OS 1215 to be heard?

Whether the dispute in OS 1215 falls within the scope of the EJC

26 We begin by noting that it is not disputed that ACP-S, as the party relying on the EJC, needs to establish that there is a "good arguable case" that the dispute in OS 1215 falls within the scope of the EJC: see *Vinmar Overseas (Singapore) Pte Ltd v PTT International Trading Pte Ltd* [2018] 2 SLR 1271 ("*Vinmar*") at [41]. Further, it appears that the parties proceeded before the Judge on the basis that the Employment Contract and the LTIP were separate agreements. This much is clear from the fact that the arguments canvassed below revolved around whether the dispute in OS 1215 arose out of the Employment Contract *or* the LTIP, and whether the EJC in the Employment Contract could be interpreted to apply to disputes arising out of *another* contract (*ie*, the LTIP). On appeal, as we have noted at [23(a)] above, ACP-S has made its case on a similar premise, in so far as it accepts the Judge's finding that the Employment Contract and the LTIP are separate agreements, and that the dispute in OS 1215 arises out of the LTIP. ACP-S also relies on the Principle,

which, as noted above at [21], pertains to when a jurisdiction clause in one contract may be construed as applying to disputes arising out of *another* contract.

27 However, in our view, it is imperative to first consider whether the Employment Contract and the LTIP are *indeed* separate contracts. The reason is simple – if the LTIP were simply an annexure or a supplement to the Employment Contract, such that it in fact forms part of the Employment Contract, it would be moot to have recourse to the Principle, which governs the interpretation of jurisdiction clauses in situations where there *is more than one* contract. In such a situation, whether the dispute in OS 1215 falls within the scope of the EJC would simply be a matter of interpreting the Employment Contract and the LTIP as a *single* agreement. We therefore turn to consider this issue first.

Whether the Employment Contract and the LTIP are separate contracts

28 As noted at [9] above, it is common ground that Ms Goh's participation in the Incentive Plan was pursuant to cl 2.5 of the Employment Contract. Further, it appears that the parties anticipated that cl 2.5 would be supplemented by terms contained in other documents, as cl 2.5 expressly states that the employee "may participate in the carried interest program … *subject to the details to be provided in separate agreements and notices by ACP*" [emphasis added]. Thus, despite the reference to "separate agreements" in cl 2.5, there may perhaps be some argument that the LTIP is in substance a document *supplemental* to the Employment Contract, in that it merely serves to provide the details of the carried interest programme mentioned in cl 2.5 without creating obligations between the parties under a separate agreement. That being

said, we are ultimately disinclined towards this view, for the reasons set out below.

29 First, we note that under the Incentive Plan, Plan Participants are required to *separately agree* to be bound by the terms and conditions of the plan, *ie*, the Plan Terms. As referred to at [10] above, cl 3.2 of the Plan Terms expressly states that a Plan Participant only acquires an Incentive Award upon ACP's receipt of his/her agreement to be bound by the Plan Terms:

> 3.2 Issue of Award Notice
>
> At the latest in March of a given year, the ACP Management Board will send the Award Notices to each Plan Participant. Only upon receipt by the Company of the Plan Participant's confirmation that she or he agrees to be bound by the rules of the Plan and agrees to accept the Incentive Awards, a Plan Participant acquires such Incentive Awards subject to the provisions of the Plan.

30 Likewise, the template Award Notice found in Schedule 2 to the Plan Terms, as well as the Award Notices issued to Ms Goh, each state as follows:

> Please sign and return the enclosed duplicate of this letter, as a confirmation that you agree to be bound by the rules of the Plan and agree to accept the Incentive Award …

31 In our view, it is clear from the above that the parties did not intend for the LTIP to merely be a supplemental document to the Employment Contract. Had this been the case, there would have been no need to require Ms Goh to separately agree to be bound by the Plan Terms, or for payment of the Incentive Awards to be conditional upon such agreement. We find it clear from the documentation that the interplay between the Employment Contract and the LTIP was as follows – while Ms Goh was eligible to receive *an offer* (by the Award Notice) to participate in the Incentive Plan (a carried interest programme) pursuant to cl 2.5 of the Employment Contract, her participation in

the Incentive Plan was nonetheless contingent on her concluding a *separate* agreement (*ie*, the LTIP) by signing the Award Notice accepting the Plan Terms. This is broadly consistent with the language of cl 2.5 of the Employment Contract, which references the Incentive Plan as being subject to details to be provided in separate agreements and notices by ACP. Viewed in this light, the reasonable conclusion is that the Employment Contract and the LTIP are separate agreements.

32 Second, we find it significant that the Employment Contract and the LTIP each contains an entire agreement clause (see [8] and [14] above), and have differing choice of law clauses (see [7] and [14] above). Had the parties intended for the LTIP to be part of the Employment Contract, one would not have expected each to contain its own entire agreement clause and choice of law clause. Indeed, if the Employment Contract and the LTIP were part of one contract, it would be unusual for different choices of law to apply. We therefore consider that these indicia point in favour of the Employment Contract and the LTIP being separate agreements.

33 Finally, while we do not consider this to be itself conclusive, we also note that the Employment Contract and the LTIP contain differing provisions on how variations may be made. On one hand, cl 7.4 of the Employment Contract provides that any modifications or amendments "shall become effective only if done in writing and signed by both parties". In contrast, cll 7.1 and 7.2 of the Plan Terms permit variations to be made to the Plan Terms *without* the consent of Plan Participants in certain circumstances. Again, this does suggest that the two agreements are separate.

34 In the circumstances, we are of the view that the Employment Contract and the LTIP are correctly regarded as separate agreements. This was the

Judge's conclusion: see GD at [27]. It follows that the question of whether the dispute in OS 1215 falls within the scope of the EJC engages the question of the applicability of the Principle, which we turn to consider next.

The Principle

35 In the seminal case of *Fiona Trust & Holding Corporation and others v Privalov and others* [2007] 4 All ER 951 ("*Fiona Trust*"), the question before the House of Lords was whether as a matter of construction, an arbitration clause in a standard form charterparty applied to disputes over whether the charter had been procured by bribery. The House of Lords answered the question in the affirmative. Lord Hoffmann, with whom the other members agreed, observed that the time had come for a "fresh start" to be made on the construction of arbitration clauses (at [12]). In particular, Lord Hoffmann noted that the construction of arbitration clauses should begin from the following presumption (at [13]):

> In my opinion the construction of an arbitration clause should start from the assumption that the parties, as rational businessmen, *are likely to have intended any dispute arising out of the relationship into which they have entered or purported to enter to be decided by the same tribunal.* The clause should be construed in accordance with this presumption unless the language makes it clear that certain questions were intended to be excluded from the arbitrator's jurisdiction. As Longmore LJ remarked, at [17]: '[i]f any businessman did want to exclude disputes about the validity of a contract, it would be comparatively easy to say so.'
>
> [emphasis added]

36 The *Fiona Trust* presumption has since been adopted by our courts. In *Larsen Oil and Gas Pte Ltd v Petroprod Ltd (in official liquidation in the Cayman Islands and in compulsory liquidation in Singapore)* [2011] 3 SLR 414, the Court of Appeal was concerned with whether certain claims which were based on the avoidance provisions in the Bankruptcy Act

(Cap 20, 2009 Rev Ed) and the Companies Act (Cap 50, 2006 Rev Ed) fell within the scope of an arbitration agreement entered into by the parties. The court ultimately found such claims to be outside the scope of the arbitration agreement and in any event, non-arbitrable. Nevertheless, the court cited *Fiona Trust* with approval, and accordingly started its analysis from the premise that "an arbitration clause should be construed widely so as to include all disputes relating to the contract … unless the language used in the arbitration clause clearly excludes the particular dispute" (at [14]).

37 Further, in *Bunge SA and another v Shrikant Bhasi and other appeals* [2020] 2 SLR 1223 ("*Bunge*"), the Court of Appeal endorsed the application of the *Fiona Trust* presumption to the interpretation of jurisdiction clauses. In *Bunge*, the parties had entered into various back-to-back contracts, each of which contained an exclusive jurisdiction clause that applied to disputes "arising out of or in connection with" the respective contracts. The question was whether these clauses were broad enough to encompass disputes arising from pre-contractual conduct. In holding that they were, the Court of Appeal observed as follows (at [37]):

> 37 In more recent times, however, the courts have recognised an important overarching principle – that the wording of arbitration and jurisdiction clauses should be given a broad or generous interpretation, based on the presumption that rational businessmen are likely to have intended that all the questions which arise out of the relationship which they have entered into or purported to enter into, are to be submitted to the same forum: *Fiona Trust & Holding Corporation v Privalov* [2007] 4 All ER 951 ('*Fiona Trust*'), endorsed in *Rals International Pte Ltd v Cassa di Risparmio di Parma e Piacenza SpA* [2016] 5 SLR 455 at [30]. Although *Fiona Trust* was concerned with an arbitration clause, the principle applies equally to jurisdiction clauses: Adrian Briggs & Peter Rees, *Civil Jurisdiction and Judgments* (Informa Law, 5th Ed, 2009) at pp 433–434. …

38 It can be seen from *Bunge* that our courts have applied the *Fiona Trust* presumption to what might be termed "single contract scenarios", where the ambit of the jurisdiction clause in *a single* contract is expanded to apply to disputes that do not arise directly out of *any* contract (*eg*, disputes over pre-contractual conduct, as was the case in *Bunge*). The present matter, however, concerns the applicability of the *Fiona Trust* presumption to a *multi*-contract scenario, where the relevant question is whether a jurisdiction clause in one contract ("Contract A") may be read as applying to disputes arising out of *another* contract ("Contract B").

39 The Judge observed in the GD at [33] that Singapore courts have yet to extend the *Fiona Trust* principle to multi-contract disputes. With respect, this may not be entirely correct. We note, for instance, that in *Trisuryo Garuda Nusa Pte Ltd v SKP Pradiksi (North) Sdn Bhd and another and another appeal* [2017] 2 SLR 814 ("*Trisuryo*"), the Court of Appeal appeared to apply the *Fiona Trust* presumption in the context of a multi-contract dispute. In that case, the parties had entered into two deeds for a Singapore special purpose vehicle, Trisuryo Garuda Nusa Pte Ltd ("TGN"), to purchase shares held by two Malaysian investment holding companies (the "SKP Companies"). Each of the deeds contained an exclusive jurisdiction clause in favour of Indonesia. The SKP Companies, however, alleged that they had also separately entered into an oral agreement with TGN for it to hold the shares on trust for them. The SKP Companies subsequently commenced action in Singapore ("Suit 252"), claiming that TGN had breached the oral agreement. The question before the Court of Appeal was thus whether the exclusive jurisdiction clauses in the deeds covered the dispute in Suit 252, which appeared to be based on the oral agreement. In answering this question in the affirmative, the Court of Appeal referred to *Fiona Trust* and concluded that it was "unlikely in the extreme that

the parties intended to have courts in two different jurisdictions hear such closely related disputes" (at [79]).

40 It thus seems to us that our courts *have* applied the *Fiona Trust* presumption in a multi-contract situation. As we explain further at [41] below, the applicability of the *Fiona Trust* presumption to multi-contract situations forms the basis for what has been termed the "Extended *Fiona Trust* Principle" in English law. It appears, however, that our courts have previously not had the opportunity to consider the Principle and whether it should be accepted as part of Singapore law. As the question of the application of the *Fiona Trust* presumption in a multi-contract situation arises squarely in the present appeal, it presents us with the opportunity to consider the Principle, and its applicability. We trace the evolution of the Principle in English law below.

41 Following the decision in *Fiona Trust*, the English courts applied the *Fiona Trust* presumption to multi-contract disputes in a series of cases. In *AmTrust Europe Ltd v Trust Risk Group SpA* [2016] 1 All ER (Comm) 325 ("*AmTrust*"), Beatson LJ (sitting in the English Court of Appeal) explained that the *Fiona Trust* presumption remains a useful starting point in multi-contract scenarios, where the two contracts in question do not contain *competing* jurisdiction clauses, as follows (at [45]–[46]):

> 45 [*Fiona Trust*] concerned the scope of a single arbitration clause. This case concerns an overall agreement package which contains two express choice of law and jurisdiction clauses, one of English law and jurisdiction, the other of Italian law and arbitration. Mr Samek submitted that, although the present case is not about the scope of a single arbitration clause, the *Fiona Trust* 'one-stop'/'one jurisdiction' presumption remains a useful starting point. In principle, and subject to the qualification in the next paragraph, I agree. As Lord Collins stated in *UBS AG v HSH Nordbank AG* [2010] 1 All ER (Comm) 727 at [84], *where the agreements are all connected and part of one package, 'sensible business people would not have intended*

> *that a dispute of this kind would have been within the scope of two inconsistent jurisdiction agreements'*.
>
> 46 Where the overall contractual arrangements contain two or more differently expressed choices of jurisdiction and/or law in respect of different agreements, however, the position differs in that one does not approach the construction of those arrangements with a presumption. So, the fourteenth edition of *Dicey, Morris and Collins on the Conflict of Laws* stated:
>
> > '[T]he decision in *Fiona Trust* has limited application to the questions which arise where parties are bound by several contracts which contain jurisdiction agreements for different countries. There is no presumption that a jurisdiction (or arbitration) agreement in contract A, even if expressed in wide language, was intended to capture disputes in contract B; the question is entirely one of construction …' (Paragraph 12–094.)
>
> [emphasis added]

42 Accordingly, the English courts have utilised the *Fiona Trust* presumption to construe a jurisdiction clause in Contract A as applying to disputes arising out of Contract B, where Contract B does not contain a jurisdiction clause. Examples of such cases include *Altera Absolute Global Master Fund v Sapinda Invest SARL* [2018] 1 All ER (Comm) 71 ("*Altera*") and *Etihad Airways PJSC v Flöther* [2020] 2 WLR 333 ("*Etihad*"). We discuss these cases further below at [60]–[61]. Subsequently, in *Terre Neuve SARL (a company incorporated in France) and others v Yewdale Ltd and others* [2020] EWHC 772 (Comm) ("*Terre Neuve*"), Bryan J (sitting in the English High Court) took stock of the case law and distilled the circumstances under which, as a matter of construction, a jurisdiction clause in one contract (Contract A) may be interpreted to extend to another contract (Contract B) (at [31]). These observations were referred to by Bryan J as the "Extended *Fiona Trust* Principle" (*ie*, the Principle) and are reproduced at length in the GD at [34]. For present purposes, we adopt the Judge's summary of the Principle, as follows (GD at [35]):

(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:

(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).

43 As noted above at [40], while we do not regard the application of the *Fiona Trust* principle to multi-contract scenarios to be something entirely new in our case law, it appears that this is the first matter in which the Singapore courts have had the opportunity to consider the Principle as formulated in *Terre Neuve*. We make it clear that the Principle should not be confused with the principles governing the *incorporation* of an arbitration or jurisdiction clause found in Contract A, into Contract B. As stated in *Terre Neuve* at [31(1)], the Principle is "based on the construction of the relevant jurisdiction clause [in Contract A] … it is not based on an implication or implied incorporation of the jurisdiction clause from Contract A into a related contract [*ie*, Contract B]". Neither is the Principle based on a modification or variation of Contract B. For this reason, we are unable to agree with ACP-S's submission that the cases of *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd and another* [2014] 1 SLR 130 ("*International Research*") and *Econ Piling Pte Ltd v NCC International AB* [2007] SGHC 17 ("*Econ Piling*") necessarily

demonstrate that the Principle is already well established in Singapore case law. In our view, it is clear that the main issue in *International Research* was whether the arbitration clause in an earlier agreement had been incorporated into a subsequent agreement (at [18], [34] and [53]), while the main issue in *Econ Piling* was whether a jurisdiction clause in a subsequent agreement had superseded or varied an arbitration clause in an earlier agreement (at [10]). These cases therefore did not involve an application of the Principle.

44 That being said, we note that *International Research* and *Econ Piling* both support the proposition that where the same parties have entered into two closely-related agreements, it may be fairly assumed that they would have intended for disputes arising out of either agreement to be resolved by the same dispute resolution provision: see *International Research* at [44] and *Econ Piling* at [17]. This, in material ways, mirrors the rationale underlying the Principle as set out in *AmTrust* by Beatson LJ at [45] (see [41] above), that where two agreements are connected and part of the same package, it is unlikely that sensible businessmen would have intended for disputes arising from either agreement to be resolved in separate jurisdictions or fora.

45 We are of the view that there is good reason to accept the Principle. In our judgment, we find that the Principle provides a sound and useful framework for determining the proper ambit of a jurisdiction clause in multi-contract scenarios. We agree with the premise underlying the Principle articulated in *AmTrust* at [45], which we have referred to above at [44]. The Principle is a logical extension from the reasoning in *Fiona Trust*, which as noted at [36]–[37] above, has been endorsed by our courts on multiple occasions. The *Fiona Trust* presumption has also been applied to a multi-contract situation by our courts in *Trisuryo* (see above at [39]–[40]). Ultimately, the scope of a jurisdiction clause is a matter of contractual interpretation, as informed by the

intentions of the parties, undertaken in accordance with the approach enunciated by the Court of Appeal in *Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd* [2008] 3 SLR(R) 1029. We consider the factors comprising the Principle (as set out at [42] above) to be a useful litmus test of whether the parties intended for a jurisdiction clause in one contract to encompass disputes arising out of another contract.

46 Nevertheless, we must stress that the factors set out at [42] above 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 is 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.

47 Before leaving this point, we make a final observation. We have excluded from our analysis situations where the two agreements in question contain *competing* jurisdiction clauses. As may be seen from [41] above, it was observed in *AmTrust* that the *Fiona Trust* presumption does not apply in such a scenario. As a matter of contractual interpretation, it would seem difficult to conclude in such a scenario that the jurisdiction clause in one contract could be said to apply to disputes arising from the other. That being said, these are not the facts before us – on the present facts, only the Employment Contract contains an EJC, with the LTIP silent as to jurisdiction. We therefore do not consider it necessary to comment further.

48 With these considerations in mind, we turn to consider the application of the Principle to the facts in the present appeal.

Application of the Principle to the present appeal

49 The Judge found that applying the Principle, the EJC in the Employment Contract could not be construed as applying to disputes arising out of the LTIP. The Judge's reasoning may be summarised as follows:

(a) First, the Judge considered that the wording of the EJC was incapable of applying to disputes arising from the LTIP. The surrounding context in the Employment Contract also indicated that disputes arising from the LTIP were not governed by the EJC: GD at [37].

(b) Second, the Employment Contract and the LTIP were not concluded at the same time as part of a single package or transaction. Clause 2.5 of the Employment Contract "delinked and excised" matters relating to the LTIP from the Employment Contract: GD at [38].

(c) Third, the LTIP dealt with an entirely different subject matter from the Employment Contract. The LTIP governed a specific part of Ms Goh's employment relationship with ACP-S, while the Employment Contract governed Ms Goh's rights and obligations as an employee of ACP-S: GD at [39].

(d) Fourth, the Employment Contract and the LTIP were not interdependent in the same way contemplated in the cases of *Etihad* and *Altera*: GD at [40]–[43].

(e) Fifth, the Judge was not persuaded that the Employment Contract and the LTIP were concluded between the same parties, as the Employment Contract appeared to treat ACP and ACP-S as separate parties: GD at [44].

50 With respect, we are unable to agree with the Judge. At the outset, we highlight that the upshot of the Judge's reasoning, and Ms Goh's position in the present appeal, is that the parties had agreed for disputes arising out of the *same* employment relationship and the *same* carried interest programme to be fragmented between separate fora. To illustrate, on this basis, had there been a dispute over Ms Goh's eligibility to be offered participation in a carried interest programme such as the Incentive Plan under cl 2.5 of the Employment Contract, this would have been subject to the EJC; whereas any dispute over Ms Goh's substantive entitlements under the LTIP would fall *outside* the scope of the EJC. Such bifurcation elides commercial sense and could not have been the intention of the parties as rational business people. In a similar vein, we consider that it must have been the reasonable expectation of the parties that Ms Goh would be able to resolve *all disputes pertaining to her employment*, including disputes over the benefits that would accrue to her, *in one forum*. In this regard, the fact that Ms Goh was at all material times employed in Singapore speaks to why the EJC specifically identified Singapore as that forum. In this light, we do not see how it could have been the intention of the parties to resolve disputes under the LTIP in a forum other than Singapore. There is very little in the language of the Employment Contract or the LTIP that stands in the way of this conclusion.

51 In our judgment, applying the Principle, it must have been the case that the parties intended the EJC to apply to disputes arising out of the LTIP. We address each of the factors comprising the Principle in turn to underscore the point.

The wording of the EJC is capable of applying to disputes under the LTIP

52 First, we consider that the text of the EJC *is* capable of applying to disputes arising from the LTIP. In this regard, we respectfully do not share the Judge's following observation:

> 37 … The EJC stipulates that any dispute arising from '*this* Agreement' [emphasis added] (*ie*, the Employment Contract) is to be referred to the Singapore courts for determination under Singapore law. …

53 Clause 7.3 of the Employment Contract has two parts. The first concerns the choice of law and provides that any dispute *arising from the Employment Contract* shall be determined in accordance with Singapore law. The second part, the EJC, is not limited in the same manner, *ie*, to disputes that arise from the Employment Contract. Instead, it states that "Singapore shall be the sole forum to which *any dispute* shall be referred to" [emphasis added]. It appears that the Judge was influenced by the language of the choice of law clause in interpreting the breadth of the EJC. However, that would be to ignore the fact that the limiting language in the choice of law clause is notably absent in the EJC. It has to be remembered that the choice of law clause and the EJC serve different purposes and that for the purpose of the Principle, it is only the language of the latter that is pertinent. In our view, the scope of the EJC is not necessarily limited to disputes arising out of the Employment Contract and can be read as applying to disputes arising from the LTIP.

54 Ms Goh submits that the phrase "any dispute" in the EJC should nonetheless be construed to refer only to any dispute *under the Employment Contract*. We do not see any compelling reason for departing from the plain wording of the EJC, and for reading additional words into the clause. On the contrary, we consider that it is likely that the parties *deliberately* worded the EJC broadly, so that it would apply to disputes arising out of related agreements

such as the LTIP, for the reason that they would have reasonably intended for all disputes concerning Ms Goh's employment to be resolved in one forum. In this regard, it is pertinent that the LTIP does not provide for a choice of jurisdiction clause. This is consonant with the view that the EJC was intended to be the applicable jurisdiction clause.

55 Ultimately, it must be remembered that Ms Goh's participation in carried interest programmes, such as the Incentive Plan, was contemplated at the time of entry into the Employment Contract. Indeed, cl 2.5 of the Employment Contract contemplated entry into a separate agreement such as the LTIP. In such circumstances, it would require clear language to suggest that the parties did not intend for the EJC to apply to disputes arising from agreements that relate to those programmes. We expand on this point below at [63].

56 In a similar vein, we respectfully disagree with the Judge that the EJC must necessarily be construed to apply only to disputes under the Employment Contract, simply because the LTIP is referred to as a "separate" agreement in cl 2.5 of the Employment Contract (see GD at [37]). In our view, as we explain shortly, the phrase "separate agreements" in cl 2.5 does not detract from the fact that the Employment Contract and the LTIP are ultimately *interdependent* agreements and should therefore be read holistically.

The Employment Contract and the LTIP are interdependent agreements

57 In our view, one of the most significant factors in favour of ACP-S's position is that the Employment Contract and the LTIP *are* interdependent agreements, which were negotiated as part of the same overall package. At the outset, we highlight that both agreements clearly pertain to the employment relationship between Ms Goh and ACP-S, and in particular, Ms Goh's

compensation package as an ACP-S employee. This much is clear from the fact that the *source* of Ms Goh's right to participate in the Incentive Plan is found in cl 2.5 of the Employment Contract, alongside provisions governing her basic salary (cl 2.3), her performance bonus (cl 2.4), and her annual leave (cl 2.6). Accordingly, even if the LTIP itself was signed at a later point in time, we consider that the Incentive Plan was arguably part of the compensation package negotiated *at the time of signing the Employment Contract.* Put another way, as we have noted above at [55], the Employment Contract contemplated the parties' entry into an agreement such as the LTIP, which clearly shows that these were interrelated and interconnected agreements.

58 Indeed, Ms Goh's continued employment with ACP-S is also expressly stated as a condition of her participation in the Incentive Plan and her entitlement to Incentive Awards. In this regard, cl 1.2 of the Plan Terms defines "Plan Participants" as follows:

> '**Plan Participants**' means with regard to each Vintage the persons who have been Eligible ACP Board Members or ACP Investment Professionals for at least six months during the year to which the Vintage pertains and who have neither ceased to be an Eligible ACP Board Member or an ACP Investment Professional *nor given notice of termination of her or his employment or office or signed a termination agreement in such year or prior thereto …*
>
> [emphasis in bold in original; emphasis added in italics]

59 Consequently, Ms Goh's participation in the Incentive Plan was *conditional* upon her continued employment under the Employment Contract. Further, her entitlement to retain vested and accrue unvested Incentive Awards was dependent on her classification as a "Good Leaver", "Bad Leaver" or "Normal Leaver", which was dictated at least in part by the circumstances surrounding the termination of her employment (see the definitions of these terms above at [13]).

60 In our view, it is clear that the Employment Contract and the LTIP were interdependent in the manner contemplated by the cases of *Altera* and *Etihad*. In *Altera*, the parties had entered into two agreements for the defendant to buy back shares from the claimant: (a) an oral agreement on 26 August 2016 (the "Sale Agreement"); and (b) a written agreement on 31 August 2016 (the "Second Option Agreement"). The English High Court found that these two agreements were interdependent, and that therefore a non-exclusive jurisdiction clause in the Second Option Agreement applied to disputes arising from the Sale Agreement (at [21]–[22]). In doing so, the court noted (among other things) that the two agreements had been discussed simultaneously and to that extent were in respect of the *same package*, and that the claimant's agreement to enter into the Second Option Agreement had been conditional on the purchase of shares under the Sale Agreement (at [20]). As explained above, it is clear that in the present case, Ms Goh's entitlement to participate in the Incentive Plan was likewise conditional upon her employment with ACP-S, with both agreements collectively reflecting her compensation package as an employee. Further, Ms Goh's entitlement to vested and unvested Incentive Awards was determined (at least in part) by the circumstances of the cessation of her employment, meaning that the retention of these benefits was conditional upon the reason for the termination of her employment.

61 In *Etihad*, the question before the court was whether a jurisdiction clause in a facility agreement (the "Facility Agreement") could be interpreted to apply to a dispute arising out of a comfort letter (the "Comfort Letter"), which did not contain a competing jurisdiction clause. In finding that the jurisdiction clause in the Facility Agreement could be so construed, the court in *Etihad* observed that the Comfort Letter and Facility Agreement were part of an overall support package provided by the claimant to a German airline, and that the commercial

background showed that the two documents were very closely connected (at [72] and [83]). Similar observations may be made about the facts in the present appeal – we find it evident that the Employment Contract and the LTIP arise from the same commercial background (*ie*, the employment relationship between Ms Goh and ACP-S). The two agreements are therefore closely connected and part of the same overall package.

62 We note that in holding that the Employment Contract and the LTIP could not form part of a single package, the Judge below placed weight on the fact that cl 2.5 of the Employment Contract provides that Ms Goh's participation in the Incentive Plan is "subject to the details to be provided in *separate agreements and notices* by ACP with regard to such carried interest program" [emphasis added]. The Judge concluded that this clause effectively "delinked and excised matters relating to the LTIP from the Employment Contract" (GD at [38]; see above at [49(b)]). With respect, we are unable to agree. The phrase "separate agreements and notices" must be read in the context of the entirety of cl 2.5. In our view, the language of cl 2.5 suggests that the parties had envisioned their contractual relationship as a composite arrangement, where the overall employment relationship would be governed by the Employment Contract, but *details* of specific parts of the employment relationship (namely, Ms Goh's participation in carried interest programmes) would be fleshed out in separate agreements such as the LTIP. Put another way, as we have explained above at [31], cl 2.5 of the Employment Contract governed Ms Goh's eligibility to participate in the Incentive Plan, while the LTIP set out her substantive rights and obligations under the Incentive Plan. Seen in this light, it becomes clear why the phrase "separate agreements" was used in the wording of cl 2.5, and that cl 2.5 of the Employment Contract and

the LTIP were meant to work in *tandem* rather than in a delinked and excised manner.

63 Returning to the language of the EJC, we consider that the above context also suggests that the parties had *deliberately* opted to word the EJC broadly. This is a point we have addressed earlier at [54]–[55]. Taking into account the fact that the parties had envisioned their employment relationship to be governed by interdependent agreements, and bearing in mind that the LTIP *did not provide for a jurisdiction clause* (an observation that has been made at [54] above), it is apparent to us that the parties' intention was to have one jurisdiction clause (*ie*, the EJC) govern *any* dispute arising out of the employment relationship. In the circumstances, it is unarguable that the EJC must correctly be construed as applying to disputes arising from the LTIP.

The Employment Contract and the LTIP concern the same subject matter

64 Third, our conclusion is also fortified by the fact that the Employment Contract and the LTIP traverse the same subject matter. As noted above at [49(c)], the Judge found that the Employment Contract and the LTIP concerned different subject matter, as the LTIP pertained to "a specific *part* of their employment relationship which the parties had thought fit to carve out" (GD at [39]). We do not share this view. Given our observations above at [57] that the Employment Contract and the LTIP are in fact part of the same overall package, it follows that they concern the same subject matter (namely, Ms Goh's compensation package). While it may be the case that the LTIP pertains to a specific *part* of the employment relationship, we do not consider it meaningful to draw a distinction between the Employment Contract and the LTIP as such. In our view, such a distinction would not reflect the reality of the commercial relationship between the parties for the reasons stated earlier.

65 Moreover, a court must bear in mind the rationale underlying the Principle, which as noted in *AmTrust* (*per* Beatson LJ at [45]), is that sensible business people are presumed not to have intended for their disputes to be resolved in multiple fora (including different jurisdictions), where the disputes in question arise out of agreements that are all *connected or part of one package* (see above at [41]). Accordingly, when a court considers whether two contracts traverse the same subject matter for the purposes of the 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*. In our view, it is therefore sufficient that the Employment Contract and the LTIP both pertain to the parties' employment relationship.

66 For completeness, we also respectfully disagree with the Judge's observation that cl 8.5 of the Plan Terms necessarily evidences that there was "no overlap in terms of subject matter between the two agreements, let alone an inextricable linkage between them" (GD at [39]). Clause 8.5 of the Plan Terms states as follows:

> 8.5 Employment
>
> The rights and obligations of any individual under the terms of her or his office or employment with any Allianz Group Company shall not be affected by her or his participation in this Plan or any right which she or he may have to participate in it.

67 In our view, cl 8.5 does not in fact support the Judge's conclusion. It is apparent that by participating in the Incentive Plan, Ms Goh's employment with ACP-S was not impacted. This must be so as participation in the Incentive Plan was pursuant to the Employment Contract and conditional upon Ms Goh remaining an employee. In this light, we find it unsurprising that cl 8.5 provides that participation in the Incentive Plan shall not affect Ms Goh's rights and

obligations under the Employment Contract. Clause 8.5 simply makes that position clear. However, cl 8.5 does not mean that there was *no* overlap between the two agreements, or more specifically, that provisions in the Employment Contract could not apply to the LTIP. As explained earlier at [58]–[59], the two agreements are inextricably linked in terms of Ms Goh's eligibility to participate in the Incentive Plan, and her entitlement to retain vested Incentive Awards and accrue the benefits of unvested Incentive Awards. Clause 8.5 does not impact that.

68 We therefore do not regard cl 8.5 as a bar to applying the EJC to the LTIP.

The Employment Contract and the LTIP were concluded between the same parties

69 Fourth and finally, we also note that the parties to the Employment Contract and the LTIP are the same. We respectfully disagree with the Judge that it can be said that the Employment Contract was concluded between Ms Goh and *ACP-S*, while the LTIP was concluded between Ms Goh and *ACP*.

70 As a starting point, no legal or meaningful distinction can be drawn between ACP and ACP-S as the latter is a branch of the former. They were therefore one and the same entity. As the Judge observed, it is trite that a local branch office is considered an extension of its foreign parent company, and not a separate legal entity: *TMT Co Ltd v The Royal Bank of Scotland plc (trading as RBS Greenwich Futures) and others* [2018] 3 SLR 70 at [53]. Consequently, we do not think that anything can be made of the fact that the Employment Contract appears to distinguish between ACP and ACP-S, by referring to the former as "ACP" and the latter as "the COMPANY". Nor do we find it material that the Employment Contract was expressed as being between ACP-S and

Ms Goh, while the LTIP was expressed to have been concluded between *ACP* and Ms Goh (see the GD at [44]).

71 Further, it does not appear that the parties made any distinction between ACP-S and ACP in practice. As we have noted at [11] above, while cl 2.5 of the Employment Contract and cl 3.2 of the Plan Terms provide for the Award Notices to be issued by ACP, the Award Notices to Ms Goh were in fact issued on ACP-S's letterhead. Ms Goh then duly signed these Award Notices, thus entering into the LTIP. Thus, neither ACP nor ACP-S regarded it as material who issued the Award Notice. This is significant as the Award Notice was the offer to Ms Goh to enter into the LTIP. If it were critical from the point of contracting that the Award Notice had to come from ACP, one would not expect to see that notice being issued by ACP-S.

72 In a similar vein, we highlight that the preamble to the Plan Terms states that the Incentive Plan was adopted to enable "selected employees of *the Company or ACP US* [to] be entitled to participate in the Performance Fee that the Company receives" [emphasis added]. Clause 1.2 of the Plan Terms defines "Company" to refer to "Allianz Capital Partners GmbH or any successor or assignee" (*ie*, ACP), and "ACP US" to refer to Allianz Capital Partners of America Inc. Given that Ms Goh was clearly not an employee of Allianz Capital Partners of America Inc, it follows that she was eligible to participate in the Incentive Plan in her capacity as an employee of *ACP*, notwithstanding that she was an employee of ACP-S under the Employment Contract. This is consistent with the earlier analysis at [58]–[59] above that Ms Goh's eligibility to participate in the Incentive Plan was conditional on her being *an employee of ACP-S, under the Employment Contract with ACP-S*. Clearly therefore, for the purpose of the Plan Terms, employees of ACP-S were treated as employees of ACP.

73 In our view, the parties perceived ACP and ACP-S to be one and the same entity. This reinforces our conclusion that the Employment Contract and the LTIP were meant to be interdependent rather than distinct contracts.

74 Finally, we recognise that OS 1215 and the present appeal were brought by ACP-S and not ACP. However, for the reasons set out above, nothing turns on this as ACP and ACP-S are one party.

75 Drawing the above threads together, we are of the view that the EJC is capable of applying to disputes arising from the LTIP and ought to be construed as such. The Employment Contract and the LTIP are interdependent contracts between the same parties that concern the same subject matter. In the final analysis, the ultimate question must be whether the parties intended for the EJC to apply to disputes arising from the LTIP. As we have noted above at [50], the logical implication of the Judge's reasoning is 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 accordance with the EJC). We do not see how this could have been the intention of the parties, as rational persons. In the circumstances, we are left with no doubt that the EJC applies to disputes arising from the LTIP.

Final observations

76 We round off by making two final observations. First, for the avoidance of doubt, we highlight that our analysis is not affected by the fact that the Employment Contract and the LTIP contain different choices of law. In our view, the different choice of law provisions are explicable on the basis that on

the one hand, the Incentive Plan was offered to ACP employees not just in Singapore and appeared to be managed out of ACP's headquarters in Germany; while on the other, the Employment Contract was a bilateral contract concluded between ACP's Singapore branch (*ie*, ACP-S) and an employee in Singapore (*ie*, Ms Goh). While we have noted at [32] above that we would have found it odd for there to be two choices of law in the *same* contract, we do not find that to be an issue here as the Employment Contract and the LTIP are separate albeit interdependent agreements.

77 Second, we do not consider our analysis to be affected by the fact that the Employment Contract and the LTIP each contain an entire agreement clause. We note that Ms Goh has not relied on the entire agreement clause in the LTIP as a reason why the EJC should not apply to disputes arising from the LTIP. In any event, we note that the effect of an entire agreement clause is ultimately a matter of construction: *Lee Chee Wei v Tan Hor Peow Victor and others and another appeal* [2007] 3 SLR(R) 537 at [35]. In the present case, for the reasons stated at [50]–[75] above, we do not think that it could have been the intention of the parties for the entire agreement clause in the LTIP to preclude the application of the EJC, such that disputes arising out of the parties' relationship would potentially be fragmented across multiple jurisdictions.

78 In this regard, we note that the entire agreement clause in the LTIP states that "[t]his Plan constitutes the entire agreement and supersedes any previous agreement between the parties relating to *the subject matter of this Plan*" [emphasis added]. It may thus be the case that the entire agreement clause only operates to supersede any prior agreement pertaining to the *substantive obligations* of the parties under the LTIP. Alternatively, given that the LTIP and the Employment Contract were part of the same composite arrangement and overall package, and the LTIP served to flesh out details of a specific part of the

employment relationship (as we have explained at [62] above), it may well be the case that on a proper construction of the entire agreement clause in the LTIP, the "entire agreement" in question should refer to the Employment Contract read with the LTIP. There is some force in this point given that the classification of an employee as a "Good Leaver", "Bad Leaver" or "Normal Leaver" is determined (at least in part) by the circumstances of the employee's departure from employment, thus linking the LTIP to the Employment Contract (a point we have made earlier at [59] above). In any event, we do not consider it necessary to resolve this point as it was not pursued by Ms Goh.

Whether a stay should be granted despite the EJC

79 Having found that the EJC applies to disputes arising from the LTIP, it remains for us to consider whether a stay should be granted over the proceedings in OS 1215 despite the applicability of the EJC. In this regard, the Court of Appeal in *Trisuryo* set out the principles for when an exclusive jurisdiction clause may be disregarded (at [83]):

> 83 In *Amerco Timbers*, this court set out the general rule regarding the observance of exclusive jurisdiction agreements and also discussed the factors which would justify disregarding them. The judgment states at [11]:
>
> > 11 The law concerning an application for a stay is clear. Where a plaintiff sues in Singapore in breach of an agreement to submit their disputes to a foreign court, and the defendant applies to a stay, the Singapore court, assuming the claim to be otherwise within its jurisdiction, is not bound to grant a stay but has a discretion whether to do so or not. The court in exercising its discretion should grant the stay and give effect to the agreement between the parties unless strong cause is shown by the plaintiff for not doing so. To put it in other words the plaintiff must show exceptional circumstances amounting to strong cause for him to succeed in resisting an application for a stay by the defendant. In exercising its discretion the court should take into account all the circumstances of the particular case. In particular, the court may have regard to the following matters, where they arise:

> (a) In what country the evidence on the issues of fact is situated or more readily available, and the effect of that on the relative convenience and expense of trial as between the Singapore and foreign courts.
>
> (b) Whether the law of the foreign court applies and, if so, whether it differs from Singapore law in any material respects.
>
> (c) With what country either party is connected and, if so, how closely.
>
> (d) Whether the defendants genuinely desire trial in the foreign country, or are only seeking procedural advantages.
>
> (e) Whether the plaintiffs would be prejudiced by having to sue in the foreign court because they would:
>
> (i) be deprived of security for their claim;
>
> (ii) be unable to enforce any judgment obtained;
>
> (iii) be faced with a time bar not applicable here; or
>
> (iv) for political, racial, religious or other reasons be unlikely to get a fair trial.

80 Ms Goh contends that there is strong cause for a stay to be granted, as she would be prejudiced by having to sue in Singapore for the following reasons:

(a) The dispute in OS 1215 involves questions of German law and Singapore courts would be less adept in applying German law.

(b) She would be deprived of access to the German labour court, which has "established expertise" in labour matters.

(c) She would not have access to the European Court of Justice, and there might "potentially" be a need to refer to and interpret the European Convention on Human Rights (4 November 1950), 213 UNTS 221.

(d) If a German court determines that the ACP Management Board and ACP Compensation Committee have not exercised their

> discretion fairly and reasonably, a German court has the power to substitute the decision of the ACP Management Board and ACP Compensation Committee with its own decision. If the German court finds that there is discrimination, Ms Goh may also be entitled to direct payment.

81 We stress that as noted in *Trisuryo* at [83]–[84], a party resisting the application of an exclusive jurisdiction clause would have to show "exceptional circumstances amounting to strong cause" why it should not be held to its commitment to have all similar disputes decided in the agreed forum. For instance, on the facts of *Trisuryo*, the Court of Appeal found that this threshold was met as the claims brought by the SKP Companies were based on an alleged trust agreement, but the concept of trusts was not recognised in Indonesian law. Forcing the SKP Companies to litigate in Indonesia, pursuant to the exclusive jurisdiction clauses, would therefore cause "clear and compelling" prejudice in the sense that they would not be able to obtain any remedy in the foreign court by virtue of the nature of their claim (at [100]).

82 In our judgment, we do not consider that the prejudice alleged by Ms Goh crosses this threshold. In the first place, we note that Ms Goh does not contend that she would be denied a remedy *entirely* if she were required to resist OS 1215 – instead, her contention at [80(d)] above pertains to her not being able to access *additional* remedies that would be available to a German court. Likewise, in so far as Ms Goh submits that she would be deprived of access to the expertise of the German labour courts, or the European Court of Justice, we do not think that these considerations rise to the level of *exceptional* circumstances justifying the disapplication of the EJC. As observed in *Vinmar* at [112], factors relating to the relative convenience of litigation in Singapore and abroad will have little weight if they were foreseeable at the time of

contracting. In our view, it would have been reasonably apparent to Ms Goh from the EJC, at the time she entered into the Employment Contract, that disputes in relation to any carried interest programme such as the Incentive Plan, whether in relation to the Employment Contract or any agreement that encapsulated the details of the carried interest programme, would be subject to the exclusive jurisdiction of the Singapore courts. The alleged inconveniences of litigating in Singapore were therefore foreseeable to Ms Goh.

83 We therefore find that the EJC is engaged in the present case, and there is no strong cause for us to depart from it. Arising from this, it is not necessary for us to consider the parties' arguments on the application of the *Spiliada* test.

Conclusion

84 In conclusion, we allow the appeal and set aside the Judge's decision in its entirety. The result is that OS 1215 shall proceed.

85 ACP-S submits that (a) the costs order in SUM 308 of $7,600 (inclusive of disbursements) in favour of ACP-S should be reinstated; (b) the costs order in RA 101 of $12,000 (inclusive of disbursements) should be reversed such that the sum is payable by Ms Goh to ACP-S; and (c) it should be entitled to $20,000 (inclusive of disbursements) as costs of the present appeal. We so order as regards the costs of SUM 308 and RA 101. As regards the costs of the appeal, we award ACP-S the sum of $15,000 (inclusive of disbursements). The usual consequential orders are to apply.

Kannan Ramesh
Judge of the Appellate Division

Debbie Ong Siew Ling
Judge of the Appellate Division

Tan Tee Jim SC, Christopher James De Souza, Yan Chongshuo, Lee Junting Basil and Darius Tan En Han (Lee & Lee) for the appellant;
Pradeep Pillai, Simren Kaur Sandhu, Wong Shi Rui Jonas and Wong Yong Min (PRP Law LLC) for the respondent.
