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

[2023] SGHC 48

Originating Claim No 130 of 2022 (Summons No 3651 of 2022)

Between

(1) Parastate Labs Inc

… *Claimant*

And

(1) Wang Li
(2) Yang Zhou
(3) Babel Asia Asset Management Private Limited
(4) Babel Holding Limited

… *Defendants*

GROUNDS OF DECISION

[Arbitration — Stay of court proceedings — Case management stay — Whether court proceedings should be stayed pending resolution of arbitration]

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v
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Andre Maniam J:

Introduction

1 I ordered a stay of the claims by the claimant ("Parastate") against the third defendant ("Babel Asia") pursuant to s 6 of the International Arbitration Act 1994 ("IAA") – that stay was mandatory as there was an arbitration agreement between them.

2 On the application of the first defendant, Mr Wang, I then ordered a case management stay of the rest of the action, pending the resolution of the putative arbitration between Parastate and Babel Asia. The claimant has appealed against the case management stay in Summons 3651 of 2022 ("SUM 3651"), but not against the arbitration stay in relation to Babel Asia in Summons 3639 of 2022 ("SUM 3639"). These are my grounds of decision.

Background

Parties

3 Parastate invested in the Babel Quant Alpha USDT Fund ("the Fund"), which was managed by a cryptocurrency financial services provider trading as "Babel Finance".

4 The Babel Finance entity that Parastate contracted with was Babel Asia, a company wholly owned by the fourth defendant ("Babel Holding").

5 Mr Wang and the second defendant, Mr Yang, were two of five co-founders of Babel Holding: at the time of incorporation, Mr Wang had a 30% shareholding, and Mr Yang had a 40% shareholding.[1]

6 Mr Wang and Mr Yang were also directors of Babel Asia: Mr Wang from 21 June 2022 to date, Mr Yang from 29 July 2021 to 18 January 2022.

The management agreement and the arbitration agreement

7 Parastate and Babel Asia entered into a management agreement, following which Parastate invested into the Fund.

8 Clause 6.3 of the management agreement was a dispute resolution clause providing that disputes between Parastate and Babel Asia "shall first be resolved through consultation", and if the parties fail to reach an agreement on the dispute within 14 days after a written request for such consultation, then either party may submit the dispute to the Singapore International Arbitration Centre for arbitration in Singapore.

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[1] Mr Yang's 1st Affidavit, 28 October 2022, para 10.

Procedural history

9 By way of SUM 3639, Babel Asia applied for the court to decline jurisdiction as between it and Parastate, for Parastate's failure to abide by the pre-arbitration condition (of consultation) in the dispute resolution clause; further or alternatively, for Parastate's claims against Babel Asia in court to be stayed until further order pursuant to s 6 of the IAA as there was an agreement to arbitrate.

10 Parastate filed written submissions to resist Babel Asia's application, but at the hearing before me Parastate's counsel accepted that the court had to stay Parastate's claims against Babel Asia, in view of the arbitration agreement. Indeed, a stay under s 6 of the IAA is mandatory. Accordingly, I stayed Parastate's claims against Babel Asia. Parastate has not appealed against that stay.

11 By way of SUM 3651, Mr Wang applied for a case management stay of the whole action, pending the resolution of the putative arbitration between Parastate and Babel Asia. Having already stayed Parastate's claims against Babel Asia, I granted a case management stay of the rest of the action, and that is the subject of Parastate's present appeal.

Parastate's preliminary objection

12 In its written submissions, Parastate submitted[2] that Mr Wang could not apply for a case management stay without first getting approval from the court to make such an application. This was however not addressed by Parastate's

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2 Parastate's written submissions, paras 35 to 37.

counsel in oral submissions; instead, he dealt directly with the substantive merits of the stay application.

13 I agreed with Mr Wang's submissions[3] that he did not require prior approval of the court to apply for a case management stay. Order 9 rule 9(7)(i) of the Rules of Court 2021 provides that:

> (7) No application may be taken out by any party at any time other than as directed at the case conference or with the Court's approval, except an application for –
>
> …
>
> Stay of the whole action…

14 As Mr Wang's application in SUM 3651 was for a stay of the whole action, he did not need prior approval of the court to make the application.

Whether the whole action should be stayed

Parastate's claims

15 The key events were as follows:

(a) on 16 March 2022, Parastate was provided with a Babel Finance Presentation Deck;

(b) on 17 March 2022, Parastate executed the Management Agreement with Babel Asia;

(c) after the Management Agreement was executed, Parastate transferred US$5m of USDC coins (the "Management Assets") to a designated wallet;

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[3] Mr Wang's written submissions, paras 17 to 20.

(d) on or around 13 June 2022, Babel Finance announced that it was suspending all withdrawals and redemptions due to "unusual liquidity pressures";

(e) on 19 and 20 June 2022, Parastate informed Babel Finance that it wished to withdraw the Management Assets; and

(f) Babel Finance has not returned the Management Assets to Parastate.

16 Parastate framed four claims in its statement of claim:

(a) breach of trustee and/or fiduciary duties – by Babel Asia and Babel Holding;[4]

(b) dishonest assistance – by Mr Wang and Mr Yang of the aforesaid breaches of trustee and/or fiduciary duties by Babel Asia and Babel Holding;[5]

(c) fraudulent misrepresentation – by Babel Asia and Babel Holding,[6] and personal liability of Mr Wang and Mr Yang for those misrepresentations;[7]

(d) conspiracy – between any two (or more) of the defendants – a conspiracy to defraud and/or conspiracy to injure by unlawful means, in that the defendants conspired to defraud and/or fraudulently make

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4 Statement of claim ("SOC") paras 4 to 6I.

5 SOC paras 6J to 6M.

6 SOC paras 6N to 11.

7 SOC paras 12 to 15.

misrepresentations to Parastate with the intention of causing Parastate to invest into the Fund.[8]

Principles regarding stay of court proceedings pending resolution of a related arbitration

17 After Parastate's claims against Babel Asia had been stayed in favour of arbitration, what should happen to Parastate's claims against Mr Wang, Mr Yang, and Babel Holdings (the three defendants who were not parties to the arbitration agreement between Parastate and Babel Asia)?

18 The Court of Appeal faced a similar fact situation in *Tomolugen Holdings Ltd and another v Silica Investors Ltd and other appeals* [2016] 1 SLR 373 ("*Tomolugen*"). One matter in the court proceedings, as between the plaintiff ("Silica Investors") and the second defendant ("Lionsgate"), was *prima facie* within the scope of an arbitration agreement, and thus subject to a mandatory stay under s 6 of the IAA (see [122], [136], [137]). The court stayed the rest of the court proceedings pending the resolution of that arbitration.

19 Specifically, the court decided that if Silica Investors wished to proceed with the claim against Lionsgate that was subject to the arbitration clause, that claim would be stayed, and (subject to certain conditions) it was in the interests of case management for:

(a) the rest of the court proceedings against Lionsgate to be stayed; and

(b) the court proceedings against the other defendants to also be stayed.

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8 SOC paras 16 to 18.

(See [190], in particular (c), (e), (f).)

20 The court stated at [186] that in cases "where the dispute which is covered by the arbitration clause in question forms only part of a larger dispute with a broader horizon…the court, as the final arbiter, should take the lead in ensuring the efficient and fair resolution of the dispute as a whole."

21 At [188], the court further stated:

> This does not mean that if part of a dispute is sent for arbitration, the court proceedings relating to the rest of the dispute *will* be stayed as a matter of course. The court must in every case aim to strike a balance between three higher-order concerns that may pull in different considerations: first, a plaintiff's right to choose whom he wants to sue and where; second, the court's desire to prevent a plaintiff from circumventing the operation of an arbitration clause; and third, the court's inherent power to manage its processes to prevent an abuse of process and ensure the efficient and fair resolution of disputes. The balance that is struck must ultimately serve the ends of justice. In this regard, we consider that the court's discretion to stay court proceedings pending the resolution of a related arbitration, at the request of parties who are not subject to the arbitration agreement in question, can in turn be made subject to the agreement of those parties to be bound by any applicable findings that may be made by the arbitral tribunal.

The whole action should be stayed

22 Applying the principles from *Tomolugen*, the whole action should be stayed.

23 Regarding the first higher-order concern mentioned in *Tomolugen* at [188] – "a plaintiff's right to choose whom he wants to sue and where" – the court recognised the following at [187]:

(a) "that right is not absolute";

(b) "that right may be curtailed or may even be regarded as subsidiary to holding the plaintiff to his obligation to arbitrate where he has agreed to do so"; and

(c) that right "is restrained only to a modest extent when the plaintiff's claim is stayed temporarily pending the resolution of a related arbitration, as opposed to when the plaintiff's claim is shut out in its entirety" (citing *Reichhold Norway ASA v Goldman Sachs International* [1999] CLC 486 ("*Reichhold Norway (HC)*") at 491 per Moore-Bick J).

24 Regarding the second higher-order concern – the court's desire to prevent a plaintiff from circumventing the operation of an arbitration clause – a stay under s 6 of the IAA is *mandatory*, and that necessarily prevails over the court's desire "to avoid the complications inherent in having to resolve a dispute across two different fora" (*Tomolugen* at [2], [122], [136], [137]).

25 Regarding the third higher-order concern – the court's inherent power to manage its processes to prevent an abuse of process and ensure the efficient and fair resolution of disputes – the court can (as noted in *Tomolugen* at [139]):

(a) "stay the whole of the court proceedings pending the resolution of the putative arbitration, *ie*, resolve the arbitration first" (which Mr Wang asked for);

(b) "resolve that part of the court proceedings which falls outside [the arbitration stay] first"; or

(c) "allow the putative arbitration and the remaining court proceedings to run in parallel" (which Parastate asked for).

26 In *Tomolugen*, the claim that was subject to a mandatory stay under s 6 of the IAA was the "Management Participation Allegation" against Lionsgate (at [137]). That allegation also formed part of Silica Investors' case against all eight defendants, in which Silica Investors alleged oppressive or unfairly prejudicial conduct towards it as a minority shareholder. The court decided that it would be logical to have the Management Participation Allegation determined first as between Silica Investors and Lionsgate, and thereafter the rest of the court proceedings could proceed, with the court having the benefit of the arbitral tribunal's award on the Management Participation Agreement: at [189(a)(iii)].

27 That reasoning applied with even greater force in the present case. In *Tomolugen*, the court regarded the Management Participation Allegation as "a narrow issue that is subsidiary in importance to the other issues and allegations which have been raised in the Suit." In contrast, Parastate's claims against Babel Asia (which were stayed in favour of arbitration) were foundational to all of Parastate's claims against all of the defendants in the action.

28 Parastate contracted with only one of the four defendants – Babel Asia – and all of Parastate's claims were premised on Parastate establishing that Babel Asia had breached trustee and/or fiduciary duties, or made fraudulent misrepresentations that had induced Parastate to invest in the Fund. Parastate's claims against Mr Wang and Mr Yang as individuals, and against Babel Holding as Babel Asia's shareholder, were claims for accessory liability or personal liability, premised on Babel Asia being liable against Parastate to begin with. If Babel Asia had not breached any trustee or fiduciary duties owed to Parastate, and if Parastate had not been induced to invest by any fraudulent misrepresentations of Babel Asia, all of Parastate's claims against all of the defendants would fail.

29 The disputes that Parastate had agreed to resolve in arbitration with Babel Asia included:

(a) whether (having regard to the Management Agreement) Babel Asia owed Parastate trustee and/or fiduciary duties which Babel Asia had breached (which Mr Wang and Mr Yang might have dishonestly assisted in, and which Babel Holdings as Babel Asia's sole shareholder might be responsible for);

(b) whether Parastate had been induced to invest in the Fund by fraudulent misrepresentations by Babel Asia, as contained in the Babel Finance Presentation Deck (which Parastate said Mr Wang and Mr Yang were also personally liable for); and

(c) whether Babel Asia was a party to a conspiracy against Parastate, in relation to those breaches of duty or misrepresentations.

30 It is logical to have all those issues as between Parastate and Babel Asia determined first in arbitration, before Parastate proceeds with its claims against Mr Wang, Mr Yang and Babel Holding in court.

31 In its written submissions, Parastate appeared to accept that if the court were bound to stay its claims against Babel Asia pursuant to s 6 of the IAA, Parastate's claim against the other defendants should "*consequently*" be stayed;[9] Parastate simply said that in that event, conditions should be imposed to promote an expeditious resolution of the dispute. At that point Parastate was still resisting Babel Asia's stay application, and arguing that Parastate's claims against *all* the defendants should continue in court.

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9 Parastate's submissions, para 55.

32 The court was indeed bound to stay Parastate's claims against Babel Asia pursuant to s 6 of the IAA, and at the hearing Parastate did not resist Babel Asia's stay application, which was granted.

33 Parastate, however, then argued that even though its claim against Babel Asia were stayed, it should be allowed to continue with its claims against the remaining defendants in court, in parallel with the arbitration between Parastate and Babel Asia.

34 Parastate emphasised that Mr Wang had not offered to be part of the arbitration as between Parastate and Babel Asia, or to be bound by the findings of the arbitrator.[10] Parastate's submission was to the effect that Mr Wang would seek to "re-litigate" common issues, if Parastate won the arbitration against Babel Asia.

35 This issue of "re-litigation" was addressed in *Tomolugen* at [142]:

> …if the court proceedings were stayed pending the resolution of the putative arbitration between Silica Investors and Lionsgate, then upon the completion of the arbitration, when the matter returns to the court, the remaining defendants may seek to challenge findings made in the arbitration to which they were not party and by which they might not be bound. In our judgment, if the remaining defendants were to do so, they would, in the broad sense, be "re-litigating" issues already decided in the arbitration, even though they were not parties to the arbitration and did not have the opportunity to address the arbitral tribunal on those issues.

36 The fact that there might be an attempt to "re-litigate" common issues in court, after the completion of a related arbitration, did not prevent the court in *Tomolugen* from staying the court proceedings pending the resolution of that arbitration. The court in *Tomolugen* explained at [142]:

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[10] Parastate's submissions, para 50.

> …if the remaining defendants were to challenge the arbitral tribunal's decision when this dispute returns to the court, that would be contrary to their present stance in seeking a stay of the court proceedings pending arbitration, and might potentially amount to an *abuse of the process of the court*. [emphasis added.]

37 The court added at [190(d)] that if Silica Investors offered to arbitrate the Management Participation allegation with the remaining defendants, but the remaining defendants declined that offer:

> then that, coupled with their present stance of asking for a stay of the court proceedings against them on the basis of case management, will provide strong grounds for finding that it would be an *abuse of process* for them to seek to re-litigate (in the broad sense) the Management Participation Allegation in court after the conclusion of the arbitration between Silica Investors and Lionsgate. [emphasis added]

38 In the event, the court granted a case management stay of the remaining claims pending the resolution of the related arbitration, "regardless of whether or not the remaining defendants accept any offer to arbitrate which Silica Investors may make": at [191(b)(iii)].

39 As explained in *Tomolugen*, an arbitration might only bind those who are party to it, but it does not follow that others in respect of whom court proceedings have been stayed are free to "re-litigate" common issues that have been decided in the arbitration – it may be an *abuse of process* for them to do so.

40 Parastate relied on the High Court's decision in *Epoch Mineral Pte Ltd v Raffles Asset Management (S) Pte Ltd* [2018] SGHC 223 ("*Epoch*") where the plaintiff brought claims against four defendants; the plaintiff's claims against one defendant ("Raffles" or "RAM") were stayed in favour of arbitration, but

the plaintiff was allowed to continue with its claims against the three remaining defendants in court. The court explained its decision as follows (at [10]–[11]):

> 10 When a plaintiff is claiming that the four defendants had conspired to cause him harm, he is entitled to pursue his claim in court against them even when the court had granted one of them a stay in favour of arbitration. It is true that a potential conflict in the findings of fact may arise between the court and the arbitrator, but that alone is not a reason to stymie the plaintiff against the three defendants who are not concerned in the arbitration. My views here are largely what the Court of Appeal had already expressed in *Tomolugen*. That decision does not represent what counsel for the defendants claim it holds.
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> 11 Furthermore, whatever the decision between the plaintiff and Raffles, the arbitrator's decision will not bind the plaintiff or the other defendants in this action. There is no good reason to delay the action by granting a stay so that the other defendants take their seats as spectators to watch the arbitration proceedings. Justice is best served in this case by having the action proceed forthwith and expeditiously.

41 The court stated that the putative arbitration between the plaintiff and the first defendant ("RAM") would not bind the plaintiff or the other defendants in the court proceedings, and noted a potential conflict in findings between the court and the arbitrator. At [10] of the judgment (quoted above) the court referred to *Tomolugen* in general terms, but there was no specific reference to the discussion in *Tomolugen* about "re-litigation" of findings from the arbitration possibly being an abuse of process. If "re-litigation" of findings from the arbitration might be an abuse of process, the other defendants would not (as the court in *Epoch* put it) be mere spectators watching the arbitration – that arbitration could substantively affect them in the court proceedings.

42 The decision in *Epoch* must be understood in the context of that case. As the court in *Tomolugen* observed at [186], "[t]he precise measures which the court deploys to achieve [the efficient and fair disposal of the dispute as a whole] will turn on the facts and the precise contours of the litigation in each case."

43 The *Epoch* matter proceeded to trial before the General Division of the High Court and the plaintiff obtained judgment against the remaining defendants (*Epoch Minerals Pte Ltd v Raffles Asset Management (S) Pte Ltd and others* [2021] SGHC 288 ("*Epoch (GD)*"). The appeal to the Appellate Division by the fourth defendant (Mr Maroju) failed: *Gangadhara Brhmendra Srikanth Maroju v Epoch Minerals Pte Ltd* [2022] SGHC(A) 35 ("*Epoch (AD)*").

44 The claims for which the plaintiff ("EMPL") obtained judgment may be summarised as follows (see *Epoch (AD)* at [1], [14], [16]):

(a) Mr Maroju was found liable with the second defendant ("AKS") and the third defendant ("Mr Kamil") for conspiring to injure EMPL by unlawful means in respect of a total payment of US$700,000 that was given for a purpose that turned out to be untrue;

(b) US$600,000 of the US$700,000 was paid by EMPL to AKS - Mr Maroju was found liable for dishonest assistance in aiding in AKS's breach of trust of that US$600,000; and

(c) US$100,000 of the US$700,000 was paid by EMPL to Mr Maroju - there was total failure of consideration in respect of that US100,000 and Mr Maroju was personally liable to repay that sum to EMPL.

45 In that case (see *Epoch (GD)* at [2]–[5]):

(a) EMPL had paid the US$700,000 based on *oral* representations by Mr Maroju;

(b) the full sum was paid by 3 November 2016, before EMPL was informed that RAM was the party that would be making a US$10m loan (which EMPL had paid the US$700,000 to obtain); RAM was first named in the draft term sheet dated 2 January 2017, and the arbitration agreement between EMPL and RAM came into being when the term sheet was executed;

(c) even if RAM had never been named as the intended lender, or the term sheet between EMPL and RAM had never been signed, it is evident from the judgment in *Epoch (GD)* that the court would still have found Mr Maroju, AKS, and Mr Kamil liable to EMPL – EMPL's claims against those defendants were *not dependent* on a finding that RAM was liable to the EMPL; indeed, it was only *after* EMPL had parted with its money, that RAM's name was put forward as the intended lender.

46 Each of those points stands in contrast with the present case:

(a) Parastate's case on misrepresentation was based on *written* representations in the Babel Finance Presentation Deck;

(b) Parastate only invested in the Fund *after* it entered into the Management Agreement with Babel Asia;

(c) Parastate's claims against Babel Asia were *foundational* to its claims against Mr Wang, Mr Yang, and Babel Holding: [28]–[29] above.

47 I was not persuaded that a case management was inappropriate in this case, just because such a stay was not granted in *Epoch* – the precise contours of the litigation in the two cases were very different; in particular, in *Epoch* the

matter that was subject to an arbitration stay was not material to a determination of the rest of the action, but it was central in the present case.

48 A closer analogy to the present case is *Tomolugen*, where the matter that was subject to an arbitration stay was relied upon by Silica Investors for its oppression claim against *all* eight defendants: see [26] above.

49 Another analogous case where a case management stay was granted is *Reichhold Norway (HC)*, discussed in *Tomolugen* at [164] to [170]. In that case, the plaintiffs (collectively, "Reichhold") had brought a claim in arbitration against Jotun AS ("Jotun") pursuant to the arbitration clause in the sale and purchase agreement between Jotun and Reichhold. But Reichhold also sued Goldman Sachs (Jotun's agent in the transaction) in court. Moore-Bick J stayed the court proceedings against Goldman Sachs pending the resolution of the arbitration between Reichhold and Jotun, noting that under the engagement letter between Goldman Sachs and Jotun, Jotun had agreed to indemnify Goldman Sachs against any liability to Reichhold.

50 The court in *Tomolugen* commented at [170]:

> Moore-Bick J concluded at 493 that "[i]n practical terms … an award [at the arbitration] might well determine the matter once and for all". He was alive to the fact that the arbitral award would not *bind* Goldman Sachs. But, practically, in the context of the specific commercial arrangement between the parties, the outcome of the arbitration would have been dispositive of Reichhold's claim against Goldman Sachs before the court.

51 In *Reichhold (HC)*, Goldman Sachs was sued because it was the agent of Jotun (with whom Reichhold had an arbitration agreement). Similarly, Parastate's claims against Mr Wang, Mr Yang, and Babel Holding were all premised on those defendants' connections with Babel Asia (with whom Parastate had an arbitration agreement). Parastate contended that Mr Wang, Mr

Yang, and Babel Holding were liable on account of their ownership and/or control of Babel Asia: Babel Holding was Babel Asia's sole shareholder; Mr Wang and Mr Yang were founding shareholders of Babel Holding, and directors of Babel Asia for certain periods of time. Parastate thus contended that Mr Wang, Mr Yang, and Babel Holding had accessory or personal liability for what Babel Asia had done.

52 In such circumstances, as Moore-Bick J put it in *Reichhold (HC)*, "[i]n *practical* terms…an award [at the arbitration] might well determine the matter once and for all" [emphasis added]. That was echoed somewhat by Parastate's counsel when I queried at the hearing: what would happen if Parastate lost the arbitration against Babel Asia? He responded that Parastate would have to be *practical* and decide whether to proceed against the individuals.[11] Indeed, if Parastate sought to "re-litigate" common issues that had been decided against it in the Parastate – Babel Asia arbitration, that might amount to an abuse of process as discussed in *Tomolugen* (see [35]–[39] above).

53 At the very least, the court would have the benefit of the arbitral tribunal's decision on the issues as between Parastate and Babel Asia, when the court turns to consider Parastate's claims against Mr Wang, Mr Yang, and Babel Holding: *Tomolugen* at [189(a)(iii)].

54 Parastate also relied on the English case of *Mabey and Johnson v Jonathan Laszlo Danos* [2007] EWHC 1094 ("*Mabey*") where a case management stay was not granted. In *Mabey*, the court held at [37] that "[t]he claims against Mr Gibson [who was seeking a stay] are distinct, both legally and conceptually, from the claims against DAG [in respect of which there was a

[11] Notes of evidence, 28 November 2022 at p 4, ln 3–4.

mandatory arbitration stay]". DAG, the fourth defendant, was an agent of the claimant, Mabey. That agency relationship was governed by a Representative Agreement between DAG and Mabey that contained an arbitration clause; DAG was remunerated by commission. Mabey alleged fraud consisting of a conspiracy to inflate the level of commission and divide up the surplus between DAG and/or Mr Gibson (who was alleged to own or control DAG), and two ex-employees of Mabey – Mr Danos and Mr Joyce.

55 Henderson J in *Mabey* described *Reichhold (HC)* as an "unusual case" and said that the circumstances of *Mabey* came nowhere near the "rare and compelling circumstances" envisaged by *Reichhold (CA)* as justifying a stay (at [38]). He further distinguished *Reichhold (HC)* on the basis that in *Reichhold (HC)* Goldman Sachs was the only defendant, whereas only one (Mr Gibson) of the three remaining defendants in *Mabey* was seeking a stay of the claims against him. In that regard, in the present case Mr Wang had applied for a stay of the *whole* action.

56 *Mabey* was discussed in *Tomolugen* at [171]–[174] as part of the review of the position in England. The Court of Appeal went on to hold at [187] that it "would not set the bar for the grant of a case management stay at the "rare and compelling" threshold that the English and the New Zealand courts have adopted."

57 In any event, the facts of the present case are quite different from those in *Mabey* – in that case, Mabey had documents showing strong *prima facie* evidence of fraud involving Mr Gibson, Mr Danos and Mr Joyce as actors to inflate the commissions that DAG would receive from Mabey (at [5]). That does not feature in the present case. Instead, Parastate sought to hold Mr Wang, Mr Yang, and Babel Holding liable for what *Babel Asia* had done (in the form of

representations in the Babel Finance Presentation Deck, or breaches of duties owed by Babel Asia to Parastate pursuant to the Management Agreement between Babel Asia and Parastate).

Whether conditions should be imposed for a case management stay

58 Finally, there was the issue of whether I should attach conditions to the case management stay.

59 In *Tomolugen*, the court stated at [188] (quoted at [21] above) that the court could grant a case management stay subject to the agreement of the non-arbitrating parties to be bound by any applicable findings by the arbitral tribunal. The court did not, however, impose such a condition in that case (*Tomolugen* at [190(d)], see also [191(b)(iii)]).

60 In a similar vein, I did not make the stay conditional upon the other defendants agreeing to be bound by the Parastate – Babel Asia arbitration. It remains open to Parastate to offer to arbitrate the issues in the arbitration with the other defendants (see *Tomolugen* at [190(d)])l; but I left it to Parastate whether to make such an offer, and to the other defendants whether to accept any such offer.

61 Nor did I make the stay conditional upon the arbitration being expedited (which was a condition imposed in *Tomolugen* at [190(e)(i)]). In imposing that condition, the court in *Tomolugen* considered that the matter subject to an arbitration stay was "a narrow issue that is subsidiary in importance to the other issues and allegations which have been raised in the Suit." In contrast, what is subject to an arbitration stay in the present case is the heart of the dispute between the parties: if the arbitration is decisive on the issue of Babel Asia's

liability to Parastate, only the question of accessory or personal liability of the other defendants remains to be determined thereafter (if at all).

62 It remains open to Parastate to seek to expedite the arbitration if it truly wishes to do so. At the time of the case management conference on 28 December 2022 (a month after my decision), Parastate had yet to commence arbitration. I do not know if Parastate has since done so.

Conclusion

63 Having granted a mandatory arbitration stay of Parastate's claims against Babel Asia, I exercised my discretion to stay the rest of the action, to ensure the efficient and fair resolution of the dispute as a whole, and ultimately serve the ends of justice.

Andre Maniam
Judge of the High Court

Foo Maw Shen, Chu Hua Yi and Mark Tan (FC Legal Asia LLC) for the claimant;
Choo Zheng Xi and Carol Yuen (Remy Choo Chambers LLC) for the first defendant;
Darius Chan and Michael Chan (Breakpoint LLC) for the second defendant;
Ang Ann Liang and Yeoh Tze Ning (Allen & Gledhill LLP) for the third and fourth defendants.