

Client Memorandum

Arbitration in the Cayman Islands

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Arbitration means Arbitration

Cayman Islands Court of Appeal stresses rule that arbitration clauses apply to all disputes arising under a contract unless there is express contractual language to the contrary

In *McAlpine Limited v Butterfield Bank Cayman Limited* (Appeal No 30 of 2019) (21 November 2019) the Cayman Islands Court of Appeal found that an arbitration clause forming part of a “multi-tiered” dispute resolution process applied to all disputes between the parties regardless of when they took place.

The Judge at first instance had interpreted the arbitration clause as only applying to disputes which arose during performance of the contract (here the construction of an office building). This was partly because the contract contained a “three tier” dispute resolution process involving resolution by a neutral, then mediation and then arbitration, all with strict time limits. The Judge found this process must have been intended to apply only to disputes arising during, with other disputes arising after construction to be resolved through the courts and without having to go through the “three tiers” in the contract.

The Court of Appeal unanimously overturned the Judgment, relying on the English law “one stop” approach to construction of dispute resolution clauses. In other words, unless the contract contains very clear language to the contrary then commercial parties selecting one means of dispute resolution (here arbitration) in a contract will be taken to have intended all disputes of any kind to be resolved in the same way and by the same tribunal. Arbitration accordingly applies to disputes of any kind, arising at any time and even where the validity of the contract itself may be in question.

The Court of Appeal also discouraged forensic type analysis of “boiler plate” contractual language, including dispute resolution clauses. The Court also noted that in this case it would be “almost inconceivable that rational business people, in the context of a building contract, would choose two different tribunals to resolve their disputes, let alone make the choice of tribunal dependent upon when payment was due or paid”.

The case has some practical implications:

- Expect arbitration clauses to be enforced strictly and widely in contracts of any kind.
- Expect the Cayman Islands courts to adopt a commercial and common sense approach to interpreting boiler plate type language in commercial contracts.
- Very clear language will be required if the intention is to have disputes of different kinds determined by different tribunals.

- Ignoring an arbitration (or jurisdiction) clause can attract an award of “indemnity costs” or even damages payable by the party in breach of the clause.
- As a signatory (through the UK) to the New York Convention on Arbitration the Cayman Islands is likely to be a sympathetic jurisdiction when it comes to enforcing an arbitration clause or an award from a Convention country.

Travers Thorp Alberga acted for the successful appellant in this case.

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