IN THE GRAND COURT OF THE CAYMAN ISLANDS

FINANCIAL SERVICES DIVISION

CAUSE NO: FSD 130 OF 2023 (NSJ)

IN THE MATTER OF THE APPLICATION FOR INTERIM RELIEF UNDER SECTION 11A OF THE GRAND COURT ACT (2015 REVISION) AND SECTION 54 OF THE ARBTIRATION ACT, 2012

BETWEEN

(1) LEED EDUCATION HOLDING LIMITED

(2) NATIONAL EDUCATION HOLDING LIMITED

(3) HYDE EDUCATION HOLDING LIMITED

Plaintiffs

AND

MINSHENG VOCATIONAL EDUCATION COMPANY LIMITED

Defendant

Before:	The Hon. Mr. Justice Segal
Appearances:	Mr Stephen Moverley Smith KC instructed by Nicholas Dunne and Rebecca Moseley of Walkers appeared for the Plaintiffs Mr Tom Lowe KC instructed by Erik Bodden and Jordan McErlean of Conyers Dill and Pearman LLP appeared for the Defendant
Heard:	19 July 2023
Draft judgment Circulated:	26 July 2023
Judgment Delivered:	3 August 2023

JUDGMENT

Introduction

1. I have before me an originating summons (the ***Originating Summons***) filed on 19 May 2023 by the Plaintiffs in which they apply for an interim injunction (the ***Interim Injunction***) pursuant to section 11A of the Grand Court Act (2015 Revision) (***Section 11A***) and to section 54 of the Arbitration Act 2012 (***Section 54***). The Plaintiffs seek to prevent the Defendant (also referred to as ***Minsheng***), a company incorporated in the Cayman Islands, from taking any steps to enforce a series of share charges (the ***Charges***) granted to Minsheng by the Plaintiffs over 49% of the issued share capital of Leed International Education Group Inc. (the ***Company***), a company also incorporated in the Cayman Islands, pending the determination of two arbitrations commenced at the Hong Kong International Arbitration Centre (the ***Hong Kong Arbitration***) in Hong Kong and at the China International Economic and Trade Arbitration Commission (***CIETAC)*** in Beijing, the People's Republic of China (the ***PRC Arbitration,*** together with the Hong Kong Arbitration, the ***Arbitrations***).

2. The Plaintiffs filed evidence in support of their application. This was the First Affirmation (***Li 1***) and the Second Affirmation (***Li 2***) of Li Hongtao (***Mr Li***), the Second Affirmation of Chung Him Ng (***Mr Ng***) and the First Affirmation (***Li D 1***) and the Second Affirmation (***Li D 2***) of Ms Li Dongxia (***Ms Li Dongxia***). Mr Li is the sole shareholder and sole director of the Second Plaintiff and the chairman, general manager and legal representative of Leed National Education Technology (Beijing) Limited (***Leed Beijing***). Mr Ng is the senior counsel in the Hong Kong office of Wilson Sonsini Goodrich & Rosati (***WSGR***), the Plaintiffs' Hong Kong solicitors. Ms Li Dongxia is a certified PRC lawyer with Gaopeng & Partners Law Firm, a PRC law firm. The Originating Summons was served on the Defendant who has filed evidence in answer. The evidence filed by the Defendant was the First Affirmation (***Lam 1***), the Second Affirmation (***Lam 2***) and the Third Affirmation (***Lam 3***) of Lam Ngai Lung (***Mr Lam***). Mr Lam is a director of Minsheng.

3. The Originating Summons was heard on 19 July 2023. Mr Stephen Moverley Smith KC appeared on behalf of the Plaintiffs and Mr Tom Lowe KC appeared on behalf of the Defendant.

4. The Originating Summons refers both to Section 11A and Section 54 (Section 54 is quoted in this judgment and I set out Section 11A in the appendix) although during the hearing it became apparent that the Plaintiffs' claim to injunctive relief is based wholly on Section 54 although

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there was some debate at the hearing as to the relationship between the two sections. During the hearing I asked whether any relevant material to which the Court could properly refer was available which explained the purpose and intended scope of Section 54 but counsel said that they believed there was none. Immediately following the hearing I undertook some research of my own and it became clear that there were relevant materials both in the form of Hansard reports of the second reading of the Arbitration Bill 2012 and the reports of the Cayman Islands Law Reform Commission (available on the Commission's website) which include the results of the Commission's consultation on the draft Arbitration Bill 2011. I informed the parties of what I had located (including similar language to Section 54 in provisions in the Singapore International Arbitration Act) and invited (but did not require) them to file (by noon on 24 July 2023) any further submissions they wished to make on the interpretation of Section 54 by reference to these or other relevant materials. The Plaintiffs filed their Supplemental Submissions on 24 July 2023 and Minsheng filed its Note Subsequent to Hearing on 25 July 2023. Both the Plaintiffs and Minsheng confirmed that in their view Section 54 was modelled on article 17J of the UNCITRAL Model Law on International Commercial Arbitration 1985 (the ***Model Law***).

5. I have decided, for the reasons set out below, that it is appropriate to grant the Plaintiffs' application for an injunction but to do so subject to certain qualifications and conditions. I have concluded that the injunction should continue until the conclusion of the PRC Arbitration (although Minsheng under the liberty to apply provision in the order will be able to apply before then for the injunction to be discharged with permission from the CIETAC arbitral tribunal, if that tribunal decides that it has jurisdiction to hear and deal with such an application, for example in the event that Minsheng is successful in the Hong Kong Arbitration) and that the Plaintiffs should, as a condition to the grant of the injunction, undertake promptly (within a time period to be agreed between the parties or as ordered by me following receipt of submissions as to what is a reasonable time for making the application) to apply to the CIETAC arbitral tribunal for permission to continue to rely on the injunction (provided of course that such an application can now or shortly be made within the PRC Arbitration and that the CIETAC arbitral tribunal decides that it has jurisdiction to hear and deal with such an application) and that the injunction should contain a statement that it will cease to have effect (and the Plaintiffs must apply for it to be discharged) if the CIETAC arbitral tribunal having decided that it has jurisdiction to hear and deal with such an application refuses to grant such permission. Furthermore, I shall require the Plaintiffs to file a further affirmation confirming and putting in evidence the claim made in submissions that they were unable (at the time they filed the Originating Summons) to apply for interim remedies in the PRC Arbitration despite and after the filing of the request for arbitration.

6. I shall invite the parties to seek to agree the form of order to be made to give effect to this judgment (and any relevant consequential matters). If they are unable to do so by 4pm on 2 August 2023 they should file with the Court copies of the forms of order they seek with brief written submissions setting out the reasons in support.

The background

7. The Arbitrations arise in connection with an agreement dated 20 August 2018 made between Minsheng (as purchaser) and each of the Plaintiffs (as sellers) to purchase shares in the Company (the ***SPA***). The SPA is written in Chinese (as the governing text) and governed by Hong Kong law. It contains an arbitration clause providing for arbitration in Hong Kong under the rules of the Hong Kong International Arbitration Centre in the following terms:

> *"22.2 Any dispute arising out of or in connection with the execution, performance or interpretation of this Agreement shall be resolved through friendly negotiation by the Parties; in case of failure to do so, the dispute shall be filed to the Hong Kong International Arbitration Centre for arbitration in Hong Kong under the Administered Arbitration Rules of Hong Kong International Arbitration Centre. The arbitral tribunal shall consist of three (3) arbitrators. Party A and the Sellers shall nominate an arbitrator respectively, and the third arbitrator shall be nominated by the Arbitration [Centre] and act as the chairman of the arbitral tribunal. The arbitral award shall be final and binding on all Parties, and each Party agrees to be bound by and act in accordance with the award."*

8. Minsheng is a member of a group of companies whose ultimate parent is Minsheng Education Group Company Limited (***Minsheng Parent***), a company also incorporated in the Cayman Islands, which is listed on the Hong Kong Stock Exchange. The Company is the holding company of Leed International Education Group (China) Limited, which carries on a substantial business owning and operating a number of schools and colleges in the PRC (the ***Business***).

9. The Plaintiffs say that the SPA was the primary transaction document of a series of interlocking agreements that contemplated the purchase by and sale to Minsheng of the entirety of the share capital of the Company in two stages. Stage one, in August 2018, was an acquisition of 51% (the ***First Tranche***). Stage two was to be the acquisition of the remaining 49%, (the ***Second Tranche***), which was to occur between the fourth and fifth years later (the ***Option Period***). In the interim Minsheng would be entrusted with the Second Tranche, entitling it to all the profits generated by the Company's underlying business, following what, the Plaintiffs claim, was in essence a down payment of the purchase price for the Second Tranche.

10. The Plaintiffs also assert that while the SPA contemplated a sale of both Tranches, the final decision as to the sale of the Second Tranche lay with the Plaintiffs. In consequence, the sale of that Tranche was couched in terms of a put option granted to the Plaintiffs (the ***Put Option***), exercisable during the Option Period at the Plaintiffs' discretion; while the down payment of the purchase price took the form of interest-bearing loans, the amount outstanding to be applied in part payment of the purchase price, following the exercise of the option. Given that if the Plaintiffs chose not to exercise the option the loans would no longer be applied as a part payment of the purchase price for the Second Tranche, it was agreed that they would be secured by the Charges in favour of Minsheng.

11. Accordingly, pursuant to the SPA, *inter alia*:

(a). an agreement was entered into entrusting the Second Tranche to Minsheng and permitting it to receive the profits generated by the Business in accordance with article 13 of the SPA (this is the Equity Entrustment Agreement discussed further below).

(b). two loan agreements were entered into, the first on 24 December 2018 (the ***2018 Loan Agreement***) and the second on 27 June 2019 (the ***2019 Loan Agreement***) between Chongqing Yuecheng Zhiyuan Education Technology Co., Ltd., a designated PRC subsidiary of Minsheng Parent as lender (the ***PRC Lender***) and Leed Beijing, a PRC subsidiary indirectly and jointly owned by the Plaintiffs as the borrower (the ***PRC Borrower***). The loan agreements are in Chinese and governed by PRC law. They contain an arbitration clause providing for arbitration at CIETAC in Beijing. Clause 19 of the 2018 Loan Agreement and clause 18 of the 2019 Loan Agreement are in the following terms:

> *"All disputes arising from or in connection with the implementation of this Agreement or related to this Agreement shall be settled through friendly negotiation. If the negotiation fails, it shall be submitted to the China International Economic and Trade Arbitration Commission for arbitration in Beijing and the award shall be final and binding on all parties to the dispute. During the arbitration process, this Agreement shall continue to be performed except for the part of the dispute which is under arbitration."*

(c). pursuant to the 2018 Loan Agreement on 11 February 2019 the PRC Borrower drew down the first loan of RMB 200 million (the ***First Loan***). Pursuant to the 2019 Loan Agreement on 27 June 2019 the PRC Borrower drew down the second loan of RMB 200 million (the ***Second Loan,*** together with the First Loan, ***the Loans***).

(d). the 2018 Loan Agreement (in clause 14(4)) and the 2019 Loan Agreement (in clause 13(4) contained a term which deals with the effect of the exercise of the Put Option on the obligations of the PRC Borrower under the Loans. It states as follows (underlining added):

> "*During the term of this Agreement, if (1) within the fourth and fifth full year of the effective date of the Share Purchase Agreement, the Sellers elect to sell their 49% of the shares in Leed International to Minsheng Education in accordance with the exit arrangement stipulated in Clause 8 of the Share Purchase Agreement, and (2) Party B or the Sellers [the Plaintiffs] has/have issued to Party A or Minsheng Education a written confirmation not to repay the Loan Amount under this Agreement, in such event the parties agree that, the actual share purchase price to be paid by Minsheng Education to the Sellers at that time shall be reduced by the total amounts owed by Party B and the Sellers to Party A and Minsheng Education under this Agreement and the Share Charge Agreements, including but not limited to outstanding Loan Amount, accrued and unpaid Loan Interest and additional late fees payable by Party B to Party A. The accrued and unpaid Loan Interest and additional late fees (if any) shall be calculated up to and including the date when Minsheng Education actually pays the share purchase price (emphasis added) (Note: hereinafter referred to as the "Deduction Arrangement")."*

(e). each of the Plaintiffs entered into a share charge in favour of Minsheng over the Second Tranche to secure the borrowing by the PRC Borrower under the First Loan (the ***Charges***). No equivalent charge was executed in relation to the Second Loan (however there is a dispute as to whether the Charges were also intended to cover the liabilities under the Second Loan). The Charges are in English and governed by the laws of the Cayman Islands. They give Minsheng *inter alia* wide powers to sell, transfer, grant options over or otherwise dispose of the Second Tranche in such manner and at such prices as Minsheng deems fit in the event of default. They each contain a dispute resolution clause (clause 18) by which the parties submit to the non-exclusive jurisdiction of the Cayman Islands in the following terms:

> *"This Charge shall be governed by and construed in accordance with the laws of the Cayman Islands and the Parties irrevocably submit to the non-exclusive jurisdiction of the courts of the Cayman Islands provided that nothing in this Clause shall affect the right of the Chargee to serve process in any manner permitted by law or limit the right of the Chargee to take proceedings with respect to this Charge against the Chargor in any jurisdiction nor shall the taking of proceedings with respect to this Charge in any jurisdiction preclude the Chargee from taking proceedings with respect to this Charge in any other jurisdiction whether concurrently or not."*

12. Also on 20 August 2018 the parties also entered into the Equity Entrustment Agreement pursuant to which Minsheng was given the right to manage the Second Tranche and retain all of the net profits arising from such management. The purpose of the Equity Entrustment Agreement was to allow Minsheng to have control of and enjoy all the economic benefits derived from the

entrustment of the Second Tranche notwithstanding that Minsheng had purchased only the First Tranche. Since 29 October 2018, Minsheng has been managing the Second Tranche and retaining the net profits arising from such management.

13. The Plaintiffs claim that on 15 October 2021 they exercised the Put Option within the 2-year Option Period so that applying the formula in Article 8.1 of the SPA, RMB 2,180,735,567.50 is the purchase price for the Second Tranche (the ***Plaintiffs' Purchase Price***). The Plaintiffs' position is that on the exercise of the Put Option, the Loans were discharged.

14. Minsheng have denied that the Plaintiffs were entitled to exercise the Put Option or that if it was so entitled, the amount payable was the Purchasers' Purchase Price. It contends that on the proper construction of the SPA before the Plaintiffs could exercise the Put Option they had to be provided with a right to sell by Minsheng. Further, Minsheng has alleged that the Option Period did not commence until 21 August 2022 (i.e., the fourth anniversary of SPA) and therefore that any exercise of the Put Option in October 2021 was premature.

15. Since Minsheng denied that the Put Option had been validly exercised, the Plaintiffs were required to consider their position. They noted that taking into account the thirty day grace period set out in clause 14(2) of the 2018 Loan Agreement, if they were wrong about the validity and effect of the exercise of the Put Option, Leed Beijing would have until 10 September 2023 (the ***2018 Loan Due Date***) to cure the event of default arising by reason of non-payment of the First Loan.

16. On 25 October 2021 the Plaintiffs commenced the Hong Kong Arbitration.

17. Discussions took place and correspondence was exchanged between the parties' legal advisers. The Defendant's legal advisers are Morgan Lewis & Bockius (***MB***).

18. On 27 April 2023, the Plaintiffs sent Minsheng three written confirmations (the ***Written Confirmations***) stating that the Plaintiffs had exercised their rights pursuant to clause 14(4) of the 2018 Loan Agreement and clause 13(4) of the 2019 Loan Agreement, so that the Loans had been applied in discharge of the sums owing by Minsheng following the exercise of the Put Option and that since the Loans had been discharged the Plaintiffs would not be making further repayments. The Plaintiffs on the same date also sent Minsheng further letters (the ***Letters of Request***) in which they referred to the discharge of the Loans and requested Minsheng to release the security constituted by the Charges.

19. The Written Confirmations were in the following terms (underlining added):

> *"Whereas, Leed Education Holding Limited, National Education Holding Limited and Hyde Education Holding Limited ("we" or "us"),having exercised on 15 October 2021 their options under clause 8.1 of the share purchase agreement dated 20 August 2018 signed with Minsheng Vocational Education Company Limited ("Minsheng") to sell to Minsheng 49% of the shares of Leed International Education Group Inc. owned by us ("the Shares"), we hereby issue this Written Notice to Your Company pursuant to paragraph 4 of clause 14 of the loan agreement dated 24 December 2018 (the "2018 Loan Agreement") signed with Your Company, Minsheng and Leed National Education and Technology (Beijing) Limited ("Leed Beijing") informing you that in exercise of our rights under the said provision we give notice that Leed Beijing will no longer repay the loan amounts due under the 2018 Loan Agreement, such amounts and all other sums due under that Agreement being thereby applied against and in reduction of the purchase price to be paid by Minsheng to the Sellers in respect of the aforesaid sale and purchase of the Shares. In consequence no sum remains outstanding and unpaid under 2018 Loan Agreement."*

20. The Letters of Request stated as follows:

> *"Pursuant to Clauses 15.1, 15.3, 15.6 and/or other relevant terms of the Charge Agreement, as the Secured Obligations (as defined in the Charge Agreement) have already been unconditionally and irrevocably paid and discharged in full, we hereby request you to, within 14 days from the date hereof: (1) release any and all security constituted by the Charge Agreement including but not limited to the Charged Property (as defined in the Charge Agreement) thereof; (2) execute any and all such documents and do all such reasonable acts as may be necessary to unconditionally and irrevocably release the Charged Property from the security constituted by the Charge Agreement; and (3) provide written confirmation of the release and discharge in paragraphs failing which we reserve all of our rights to take necessary legal action to protect our interests as we deem fit without further notice."*

21. Also on 27 April 2023 WSGR wrote to MB and referred to the Hong Kong Arbitration, the Written Confirmations and the Letters of Request and asked MB to confirm whether Minsheng challenged not only the exercise of the Put Option but also the Plaintiffs' application (and set-off) of the Loans against the Plaintiffs' Purchase Price. WSGR said that if this was the case, then in order to preserve the position pending the conclusion of the Hong Kong Arbitration and to avoid causing irreparable harm to the Plaintiffs, the Plaintiffs requested that Minsheng and the PRC Lender provide within fourteen days an undertaking that they would not seek to enforce any term of the Loan Agreements or the Charges pending the final resolution of the Hong Kong Arbitration. The Plaintiffs said that they would take legal action if they did not receive the requested undertaking.

22. On 11 May 2023 MB replied and said that they were taking instructions from Minsheng but noted that the Loan Agreements required any disputes to be referred to CIETAC arbitration and that

disputes arising from the Charges were to be submitted to the non-exclusive jurisdiction of the Cayman Islands court, and that matters regarding the Loan Agreements and the Charges should be dealt with in the designated jurisdictions rather than the Hong Kong Arbitration. MB said that they did not see how the matters raised in WSGR's letter of 27 April 2023 were closely related to the Hong Kong Arbitration, as WSGR had claimed.

23. The Plaintiffs say that as a result of the Defendant's failure to provide the requested undertaking they decided to file a request for arbitration with CIETAC (which they did also on 11 May 2023) (the ***PRC Request for Arbitration***) and to file the Originating Summons.

24. On 12 June 2023, Minsheng's Cayman attorneys Conyers wrote to the Plaintiffs' Cayman attorneys, Walkers and provided a copy of an interim undertaking signed on behalf of Minsheng stating that it would not pending the determination of the Originating Summons enforce the Charges "*through the transfer of the [Second Tranche]*."

25. On 27 June 2023, the PRC Lender filed an application in Beijing No. 4 Intermediate People's Court challenging the validity of the arbitration agreement in the Loan Agreements (the ***Yuecheng Application***). On 5 July 2023, Ms Li Dongxia received a letter issued by CIETAC dated 4 July 2023 informing the parties that the PRC Arbitration was suspended as of the date of the letter, due to the Yuecheng Application. However, I was told at the hearing that the PRC Lender has now withdrawn its application so that the PRC Arbitration can proceed.

The Plaintiffs' claims in the Hong Kong Arbitration

26. The Hong Kong Arbitration relates to the Put Option and in it the Plaintiffs seek to establish that in accordance with the SPA the Put Option was validly exercised, that Minsheng is obliged to purchase the 49% interest in the Company held by the Plaintiffs and to pay the balance of the Purchasers' Purchase Price (after deducting the amount owing in respect of the Loans) and request the tribunal to issue an award for specific performance of the Put Option (thereby requiring Minsheng to pay that sum). The Plaintiffs also state, somewhat cryptically, that they seek "*Further or alternatively, damages for breach of the SPA in lieu of and/or in addition to specific performance ..*"

27. In the Hong Kong Arbitration, the Plaintiffs have filed a statement of claim setting out the claims they assert in the Hong Kong Arbitration. This provide an overview of the Plaintiffs' claims in [5] as follows:

> *"a. In December 2018, the Claimants sold to the Respondent 22,886,250 ordinary unlisted shares (representing 51% of the total issued share capital) of Leed International for a purchase price of the U.S. dollar equivalent of RMB 582,500,000 (the "Share Acquisition") pursuant to the SPA.*
>
> *b. In Clause 8.1 of the SPA ("Clause 8.1"), the Respondent gave the Claimants the right to sell the remaining 49% of the total issued share capital of Leed International to the Respondent within the fourth and fifth anniversary years after the effective date of the SPA (the "Put Option"). It is the Claimants' position that this two-year period began at the beginning of the 4th full year after the effective date of the SPA (i.e., immediately after the end of the 3rd anniversary) and runs until the end of the 5th full year after the effective date of the SPA.*
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> *c. The Claimants exercised the Put Option on 15 October 2021, on which date they notified the Respondent in writing of their exercise of the Put Option. The Respondent breached Clause 8.1 of the SPA by failing and/or refusing to proceed with the sale and purchase of the Claimants' remaining 49% of the total issued share capital of Leed International after the Claimants exercised the Put Option.*
>
> *d. The Respondent disputes that the Claimants had an immediately enforceable right to sell the remaining 49% shareholding to the Respondent under Clause 8.1 between 20 August 2021 and 19 August 2023.*
>
> *e. If the Tribunal determines that the Claimants had and have such a right, as the Claimants contend, and that the Respondent breached the SPA by failing and/or refusing to proceed with the sale and purchase of the remaining 49% shareholding after the Claimants' exercise of the Put Option, then the Tribunal must determine the appropriate remedies to award the Claimants, including specific performance of the SPA and/or damages in an amount to be determined."*

28. Further particulars of the claims are set out in the subsequent paragraphs as follows:

> "*17. The parties ultimately agreed on a two-step structure: the Original Shareholders Group was to initially sell 51% of its interest in Leed International to the Respondent and the Respondent was to grant the Claimants an immediately enforceable right (i.e., the Put Option) to sell their remaining 49% interest to the Respondent at a future point.*
>
> *18. In arriving at an agreement, the Parties executed the following documents:*
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> *a. A Confidentiality Agreement dated 23 April 2018 and signed by Hongtao Li for the 2nd Claimant and Chairman Li for Minsheng Parent.*
>
> *b. A non-binding Agreement of Intent dated 11 May 2018 (the "AOI") and signed by Ms. Ouyang for the 1st Claimant, Hongtao Li for the 2nd Claimant, Mr. Bai for the 3rd Claimant, and Chairman Li for Minsheng Parent.*
>
> *c. The SPA dated 20 August 2018 and signed by Ms. Ouyang for the 1st Claimant, Hongtao Li for the 2nd Claimant, Mr. Bai for the 3rd Claimant, and Chairman Li for the Respondent.*

d. Certain agreements being appendices to the SPA signed by the Claimants, the Respondent and/or their respective related companies.

19. In addition to what was pleaded in paragraph 17 above, there was an understanding between the Claimants and the Respondent that the Claimants would eventually exercise the Put Option in accordance with the terms of Clause 8.1, thereby selling all of the remaining interests in Leed International to the Respondent. Such understanding is reflected in, for example, the Equity Entrustment Agreement) (i.e. Appendix 37 of the SPA) where the Claimants have, inter alia, entrusted the management of the remaining 49% of the interest in Leed International and the management of the business and assets of Leed International (and the other subject companies defined therein). The Respondent would also receive 100% of the net profits from Leed International (and the other subject companies defined therein) after the completion of the purchase of 51% of Leed International, which demonstrated the parties' understanding that the Claimants will sell the remaining 49% interests to the Respondent through the exercise of the Put Option.

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22. The Share Acquisition was completed in accordance with the SPA on or around 20 December 2018. As a result of the Share Acquisition, the Respondent became the registered shareholder of 51% of the issued share capital of Leed International, and Claimants, as the other registered shareholders, retained the remaining 49% (with 1st, 2nd and 3rd Claimants respectively owning 5.05%, 39.99% and 3.96% of the issued share capital)….

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23. Clause 8.1 provides:

English Translation:

Subject to the transfer of the target shares under this agreement having been completed and in compliance with the listing rules and domestic/offshore laws, ***within the fourth and fifth full year of the effective date of this Agreement, Party A [i.e., the Respondent] must provide the Sellers [i.e., the Claimants] with a right to sell, pursuant to which the Sellers have the right to elect to sell to Party A their remaining 49% of the shares of [Leed International] (hereinafter referred to as the "Exit"). If the Sellers exercise their right to Exit during that time****, the Exit price = 85% of the average static price-to-earnings (P/E) ratio of Minsheng Education Group Company Limited [i.e., Minsheng Parent] over the preceding three (3) months from the date of sale (no more than 25 times P/E ratio) x net profit after tax (excluding non-recurring profits/losses) based on the audited accounts prepared by a 'Big Four' accounting firm of Leed International for the preceding financial year x 49%; in the event that the Exit price (as calculated in accordance with the aforesaid formula) is less than RMB981.5 million, the Exit price shall be RMB981.5 million (payable in equivalent United States dollars based on the exchange rate).) (Emphasis added).*

24. Clause 8.1 granted the Claimants the exercisable right to sell their remaining minority investment in Leed International at a defined Exit price.

25. *Further, Clause 8.1 specifies that the proceeds from the Claimants' exercise of their Put Option would be paid in U.S. dollars based on the .... exchange rate defined in the SPA.*

26. *Clause 23.1 of the SPA defines the effective date of the SPA as the signing date, which was 20 August 2018. Accordingly, the Put Option under Clause 8.1 may be exercised by the Claimants as early as 20 August 2021, the first day of the 4th full year after the effective date of the SPA (i.e., after three full years had passed following the effective date of the SPA), and remain exercisable until the last day of the 5th full year after the effective date of the SPA, 19 August 2023 (the "Exercise Period").*

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30. *On 15 October 2021, after a series of unfruitful discussions with Chairman Li and the Respondent about the commencement of the Exercise Period, the Claimants instructed their counsel at Wilson Sonsini Goodrich & Rosati ("WSGR") to formally exercise their Put Option through a written notice (the "October 2021 Notice"). The October 2021 Notice was served by hand, by post, and by email in accordance with the notice provisions of Clause 20 of the SPA.*

31. *In the October 2021 Notice, the Claimants applied the formula agreed upon by the parties in Clause 8.1 to calculate the exercise price (i.e., the Exit price). The Claimants calculated the exercise price as RMB 2,180,735,567.50 in total (e.g., RMB178,019,230.00 x 49% x 25), payable in equivalent United States dollars according to the exchange rate on the date of payment published by the State Administration of Foreign Exchange (rounding up to the nearest one-ten-thousandth). .....*

32. *On 20 October 2021, the Respondent instructed its counsel, Morgan, Lewis & Bockius ("MLB"), to write to WSGR and state the Respondent's position that the Claimants' Put Option was not yet exercisable as of 15 October 2021 (the "20 October 2021 MLB Letter"). WSGR rejected this position in a letter to MLB dated 21 October 2021. On 25 October 2021, MLB replied by letter to WSGR repeating that the Claimants' Put Option was not exercisable as of 15 October 2021 (the "25 October 2021 MLB Letter") and further stating that the exercise of the Put Option required a separate, further grant from the Respondent. Both positions are strenuously denied by the Claimants.*

33. *The Respondent breached Clause 8.1 by refusing and/or failing to proceed with the purchase of the remaining shareholding of Leed International from the Claimants. The Claimants remain as illiquid minority shareholders in Leed International because of the Respondent's breach and are unable to exit their investment by selling these remaining shareholdings to the Respondent. As a result, the Claimants have suffered and may yet suffer substantial financial damages.*

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35. *The Claimants have, at all material times, remained ready, willing, and able to fulfil and perform all their obligations under the SPA, including, but not limited to those contained in Clause 8.1. The Claimants seek, amongst other relief, specific performance of the SPA as the most appropriate remedy in this case."*

29. At [112] the Plaintiffs set out the relief sought as follows:

> *112. For all the foregoing reasons, the Claimants seek the following relief from the Tribunal:*
>
> *a. A declaration that, on the proper construction of Clause 8.1 or, alternatively, by way of rectification for common mistake and/or estoppel by convention, the period during which the Put Option is immediately exercisable by the Claimants shall have commenced on 20 August 2021 and continue until 19 August 2023;*
>
> *b. An award requiring specific performance of Clause 8.1 of the SPA by the Respondent, such that the Respondent do take all necessary actions (insofar as is necessary to complete the Claimants' sale of their remaining 49% interests in Leed International to the Respondent) to purchase the remaining 49% interest in Leed International from Claimants on such terms as the Claimants specified in their 15 October 2021 exercise notice of the Put Option;*
>
> *c. Further or alternatively, damages for breach of the SPA in lieu of and/or in addition to specific performance, including but not limited to damages for loss caused by any change in the exchange rate as specified in paragraph 25 above and for the extra interests as specified in paragraph 34 above;*
>
> *d. Interest as agreed contractually and/or otherwise authorised;*
>
> *e. Costs; and/or*
>
> *f. Such further or other relief as the Tribunal deems appropriate."*

The Plaintiffs' claims in the PRC Arbitration

30. The PRC Arbitration relates to the Plaintiffs' claims under the Loan Agreements that the sums owing thereunder have been discharged as a result of their exercise of the Put Option and service of the Written Confirmations.

31. The Plaintiffs' request for arbitration after referring to the 2018 Loan Agreement and the 2019 Loan Agreement states as follows (underlining added, bold reflects the Plaintiffs' emphasis in the original):

> *2. Clause 19 "Dispute resolution" of the 2018 Loan Agreement provides that: "All disputes arising from the implementation of this Agreement or related to this Agreement shall be settled through friendly negotiation. If the negotiation fails, it shall be submitted to **the China International Economic and Trade Arbitration Commission** for arbitration in Beijing and the award shall be final and binding on all parties to the dispute. During the arbitration process, this Agreement shall*

continue to be performed except for the part of the dispute which is under arbitration." (emphasis added)

3. *Clause 18 "Dispute Resolution" of 2019 Loan Agreement provides that: "All disputes arising from the implementation of this Agreement or related to this Agreement shall be settled through friendly negotiation. If the negotiation fails, it shall be submitted to* ***the China International Economic and Trade Arbitration Commission*** *for arbitration in Beijing and the award shall be final and binding on all parties to the dispute. During the arbitration process, this Agreement shall continue to be performed except for the part of the dispute which is under arbitration." (emphasis added)*

4. *Currently, the parties of the Loan Agreements are in dispute over the performance and have failed to settle through negotiation. The Claimants hereby commence the arbitration proceedings in accordance with the above-mentioned arbitration clauses before the China International Economic and Trade Arbitration Commission ("CIETAC").*

…..

7. *The Respondents have breached the Loan Agreements and denied that the Claimants have properly exercised their Put Option under the Share Purchase Agreement of Leed International Education Group Inc. (the "SPA"), signed by the Sellers and Minsheng Education on August 20, 2018. As such, the Claimants and the Respondents are in dispute, and the Claimants hereby seek the following relief from the Tribunal: (1) An order confirming that all obligations of Leed Guojiao and the Sellers to repay principal and interest under the Loan Agreements have been extinguished by serving Written Confirmations to Respondents; (2) An order confirming that the 1st Respondent is not entitled to enforce the charge over the 49% shares of Leed International Education Group Inc.; (3) An order that the Respondents compensate the Claimants for the attorney's fees incurred for this arbitration; and (4) An order that the Respondents bear the cost of this arbitration.*

……

13. *Pursuant to loan mechanism prescribed in Clause 13.4 of the SPA, on December 24, 2018, Leed Guojiao, the Sellers and the Respondent entered into the 2018 Loan Agreement. Chongqing Yuecheng, as the designated domestic affiliate of the 1st Respondent, provided the first tranche of loan of RMB 200,000,000 on February 11, 2019 to Leed Guojiao, the designated domestic affiliate of the Sellers. The parties agreed on the loan amount and the related share charge arrangement as follows:*

"Whereas: ..... (2) Party A [Note: i.e. Chongqing Yuecheng] is a domestic subsidiary of Minsheng Education in China, and Party B is a domestic company in China designated by the Sellers. Party A, Party B, Minsheng Education and the Sellers agree that, pursuant to the terms and conditions stipulated in this Agreement, Party A shall provide Party B with the Agreed Loan (as defined below), and Party B shall borrow the Agreed Loan from Party A ("Loan"). ***This Loan is the first of the two loans stipulated in Clause 13.4 of the Share Purchase Agreement. (3)As a condition precedent for the Loan, the Sellers will charge in aggregate 49% of the shares in Leed International held by them to Minsheng Education as security for the Agreed Loan under this Agreement****. The Sellers will each separately enter into*

a share charge agreement with Minsheng Education ("Share Charge Agreement(s)")

1. Loan Amount: Party A agrees to provide Party B with a loan in the total amount of RMB 200,000,000 ("Loan Amount") in accordance with the terms and conditions stipulated in this Agreement ("Agreed Loan"), and Party B agrees to borrow the Agreed Loan from Party A in accordance with the terms and conditions stipulated in this Agreement. .....

11. Share Charge: ***To secure Party A's rights under this Agreement, the Sellers agree to enter into the Share Charge Agreements with Minsheng Education, charging the 49% shares in Leed International held by them in aggregate to Minsheng Education, and complete the registration of the charge and filing procedures with the Registry of Company Affairs of the British Virgin Islands to secure the performance of all obligations of Party B and the Sellers under this Agreement****.*

14. Event of default: ..... 4. During the term of this Agreement, if (1) within the fourth and fifth full year of the effective date of the Share Purchase Agreement, ***the Sellers elect to sell their 49% of the shares in Leed International to Minsheng Education in accordance with the exit arrangement stipulated in Clause 8 of the Share Purchase Agreement, and (2) Party B or the Sellers has/have issued to Party A or Minsheng Education a written confirmation not to repay the Loan Amount under this Agreement, in such event the parties agree that, the actual share purchase price to be paid by Minsheng Education to the Sellers at that time shall be reduced by the total amounts owed by Party B and the Sellers to Party A and Minsheng Education under this Agreement and the Share Charge Agreements, including but not limited to outstanding Loan Amount, accrued and unpaid Loan Interest and additional late fees payable by Party B to Party A.*** *The accrued and unpaid Loan Interest and additional late fees (if any) shall be calculated up to and including the date when Minsheng Education actually pays the share purchase price (emphasis added) (Note: hereinafter referred to as the "Deduction Arrangement").*

14. *On December 24, 2018, the Sellers signed three Charge over Shares in Leed International Education Group Inc. ("Charge Agreements") with Minsheng Education to provide the charge agreed under the 2018 Loan Agreement with the remaining 49% of the shares, and completed the registration process of the share charge at the Cayman Islands.*

15. *On June 27, 2019, the Claimants and the Respondents entered into the 2019 Loan Agreement in accordance with Clause 13.4 of the SPA, agreeing that Chongqing Yuecheng will provide the second tranche of loan of RMB 200,000,000. In the fourth paragraph of Clause 13 of the 2019 Loan Agreement, the parties reemphasized the Deduction Arrangement, including the deduction of the first tranche of loan of RMB 200,000,000.*

13. Events of default: ... 4. During the term of this Agreement, if (1) within the fourth and fifth full year of the effective date of the Share Purchase Agreement, the Sellers elect to sell their 49% of the shares in Leed International to Minsheng Education in accordance with the exit arrangement stipulated in Clause 8 of the Share Purchase Agreement, and ***(2) Party B or the Sellers has/have issued to Party A or Minsheng Education a written confirmation not to repay the outstanding amount under the First Tranche Loan Agreement and this Agreement, in such event the parties***

agree that, the actual share purchase price to be paid by Minsheng Education to the Sellers at that time shall be reduced by the total amounts owed by Party B and the Sellers to Party A and Minsheng Education under the First Tranche Loan Agreement, this Agreement and the Share Charge Agreements, including but not limited to outstanding amounts of the First Tranche Loan and the Second Tranche Loan, accrued and unpaid Loan Interest and additional late fees payable by Party B to Party A*. The accrued and unpaid Loan Interest and additional late fees (if any) shall be calculated up to and including the date when Minsheng Education actually pays the share purchase price. (emphasis added)*

16. *According to the Clause 13.4 of the SPA, Clause 14 of 2018 Loan Agreement, and Clause 13 of the 2019 Loan Agreement, it is clear that the loan and deduction arrangements stipulated in the Loan Agreements are specific implementation mechanisms corresponding with the Put Option stipulated in Clause 8.1 of the SPA. After the Sellers clearly informed Respondents that they exercised the Put Option according to Clause 8.1, the Sellers actually have sold the remaining 49% shares of Leed International to the 1st Respondent; after the Claimants further serve the written notice to inform the Respondents of their exercise of the Deduction Arrangement, all liabilities of Claimants to repay principal and interest under the Loan Agreements have been extinguished through the Deduction Arrangement.*

17. *On October 15, 2021, the Sellers issued the written notice to Minsheng Education, informing the decision to exercise the Put Option pursuant to Clause 8.1 of the SPA (the "October 2021 Notice"..). However, Minsheng Education refused to purchase the remaining 49% shares in accordance with Clause 8.1 of the SPA on the grounds that the exercise period has not commenced and the grant from Minsheng Education had not been obtained. In 2021, the Sellers initiated the arbitration at the Hong Kong International Arbitration Centre ("HKIAC") in accordance with the arbitration clause stipulated in the SPA (Case No. HKIAC/A21203), and the case is currently being processed by the HKIAC tribunal.*

18. *On April 27, 2023, the Claimants further served the Respondents with the Written Confirmations, formally informing that they would not repay the outstanding sums under the Loan Agreements but exercised their rights to deduct under Clause 14.4 of the 2018 Loan Agreement and Clause 13.4 of the 2019 Loan Agreement the amounts outstanding under those Loan Agreements against the exercise price to be paid by Minsheng Education to the Sellers …, and request Minsheng Education to release all the charge over the 49% shares of the Leed International. However, as of the date hereof, the Respondents not only refused to recognize the deduction, but also have been ignoring the requests for release from the Claimants.*

19. *Based on the above circumstances, the Claimants hereby initiate this arbitration in accordance with the relevant laws and regulations and the provisions of the Loan Agreements, respectfully requesting the tribunal to confirm that all liabilities for Leed Guojiao and the Sellers to repay the principal and interest under the Loan Agreements have been extinguished. That is, by delivering the October 2021 Notice and Written Confirmations to the Respondents, the Claimants have exercised their rights in accordance with the provisions of Clause 14.4 of 2018 Loan Agreement and Clause 13.4 of 2019 Loan Agreement, and the Claimant's obligation to repay the RMB 400,000,000 and corresponding interest under the Loan Agreements has been extinguished. Further, the 1st Respondent is not entitled to enforce the charge over the 49% shares of Leed International under the Loan Agreements."*

The basis of the application in the Originating Summons

32. In the Originating Summons the Plaintiffs seek the following orders against Minsheng:

> *"Until the delivery of a final arbitral award on the merits in respect of each of the following proceedings outside of the Cayman Islands: [the Hong Kong Arbitration and the PRC Arbitration] the Defendant, whether by itself or by its servants, agents or otherwise, be restrained from taking any steps to enforce [the Charges] against 49% of the issued share capital of Leed International Education Group Inc., the charged property pursuant to the Share Charges (the "Charged Property"), whether pursuant to the Share Charges or otherwise, including without limitation, taking any steps to exercise voting rights and/or consensual powers pertaining to the Charged Property or any part thereof, to sell, transfer, grant options over or otherwise dispose of the Charged Property or any part thereof, or to receive and retain any dividends, interest or other moneys or assets accruing on or in respect of the Charged Property or any part thereof."*

33. The Plaintiffs seek to restrain the exercise by Minsheng of its enforcement rights under the Charges pending the outcome of the Arbitrations. The Plaintiffs say that if they are successful in the Arbitrations it will be established that the liabilities secured by the Charges have been discharged so that Minsheng no longer had the right under the Charges (or in equity) to enforce the Charges. They say that if Minsheng is permitted to exercise their enforcement rights under the Charges before the Plaintiffs have been able to obtain an award in the Arbitrations they will suffer irreparable loss (for which damages will not be an adequate remedy) because such enforcement (particularly a sale of their shares in the Company to a third-party) would at least be difficult and probably impossible to unwind and the effect of such enforcement would or could be to prejudice their claim to specific performance of the Put Option in the Hong Kong Arbitration or to deprive the Plaintiffs of their proprietary rights in these shares (which may subsist and be of material value in the event that if they succeed in the Arbitrations, the Loans are confirmed as having been paid and the Charges released). The Plaintiffs also argue that they have established that Minsheng is unlikely to have sufficient assets to meet its liabilities to the Plaintiffs and to compensate the Plaintiffs for the loss suffered as a result of a wrongful enforcement of the Charges.

34. The Plaintiffs argued that in order to establish before the Hong Kong arbitral tribunal a right to an award of specific performance they must show that they are ready, willing and able to complete the sale pursuant to the Put Option by transferring the Second Tranche to Minsheng. They argue that they will not be in a position to do so if the Second Tranche has already been sold or appropriated by Minsheng, purportedly in the exercise of its enforcement rights under the Charges. Such a wrongful enforcement would entirely frustrate the Hong Kong Arbitration.

35. Furthermore, the Plaintiffs needed to protect their rights and position in the event that Minsheng fails to comply with an award for specific performance and fails to pay the balance of the price

payable following the exercise of the Put Option. The Loans will have been discharged in full (by the application pursuant to the contractual discharge or set-off mechanism in the Loan Agreements), so that the Plaintiffs would have unencumbered title to the Second Tranche and their 49% interest in the Company. They would, following Minsheng's default in paying the balance of the price, be able to accept Minsheng's repudiatory breach of and terminate the parties' outstanding obligations under the Put Option and claim damages. The damages, they say, would be calculated on the basis that the Plaintiffs had retained the Second Tranche (and the value of the 49% interest in the Company would be deducted from the Plaintiffs' damages claim). However, if Minsheng had been permitted to enforce the Charges in the meantime and sell the shares to a third-party, then the Plaintiffs' damages claim will have increased (probably substantially) and they will have to pursue the Plaintiffs for the entirety of the Plaintiffs' Purchase Price of approximately RMB2.18 billion.

36. Minsheng, the Plaintiffs submitted, had produced no evidence to show its own financial position or to demonstrate its own ability to pay that sum. While it had produced the 2022 annual financial statements (the ***2022 Statements***) for the entire group under the control of Minsheng Parent (the ***Minsheng Group***) they were largely irrelevant given that the liability of Minsheng under the Put Option was not guaranteed by any other companies within the Minsheng Group. Even if the 2022 Statements were taken into account, and the resources of the Minsheng Group treated as being available to be applied in satisfaction of the Purchasers' Purchase Price, there were, the Plaintiffs submitted, very real doubts about whether they would be sufficient and/or whether they could be used without restrictions. As had been explained by Mr Li in Li 2 at [18]-[21] the Minsheng Group had very limited foreign currency reserves available to satisfy any award and its RMB reserves were subject to severe constraints by virtue of the fact that its income was primarily generated in the education sector in the PRC and the super majority of its cash resources were in the form of onshore RMB funds that were subject to foreign exchange control restrictions under the PRC law. Further, the Plaintiffs feared that once Minsheng, having already acquired the First Tranche, was able to deal with the Second Tranche it would be in a position to dispose of the entirety of the share capital of the Company to a third party (*bona fide* or not). Any such transaction was likely to be impossible to unwind, with the result that the Plaintiffs, who would otherwise have retained the Second Tranche in the event that the award of specific performance was not honoured, would have been deprived of that opportunity.

37. The Plaintiffs noted that Minsheng had, without having permission to file further evidence and in any event belatedly, adduced in evidence (as an exhibit to Lam 3 sworn on 10 July 2023) a letter (the ***Parent Letter***) of the same date from Minsheng Parent to Minsheng in which it stated as follows:

> *"We write to confirm our support for [Minsheng] in the [Hong Kong Arbitration] and its opposition to [this application]. For the avoidance of doubt, if and when necessary and when [Minsheng] is in need, we are ready to provide [Minsheng] with financial assistance in the (unlikely) event that an arbitral award is ultimately made against [Minsheng] in the [Hong Kong Arbitration]."*

38. The Plaintiffs submitted that this evidence was filed too late and should be ignored. But even if Minsheng was permitted to rely on it, the Parent Letter was of no material weight and did not affect the conclusion that the evidence established that there was at least a serious risk that Minsheng would be unable to meet a claim for damages. The Parent Letter was not a guarantee and was drafted in a manner that raised serious doubts as to its enforceability. It referred to unspecified and unquantified financial assistance being provided "*if and when necessary*" and was only addressed to Minsheng rather than the Plaintiffs or the Court.

The Plaintiffs' submissions

The Plaintiffs' case in summary

39. In their written Outline Submissions the Plaintiffs said that the Court was being invited "*to exercise its jurisdiction under [Section 11A] and [Section 54] to make an order in aid of the Arbitrations*." The Plaintiffs submitted that while Section 11A provided that relief could be granted in aid of foreign court proceedings, the jurisdiction was extended to arbitration proceedings by Section 54 "*the arbitration being in essence deemed a court proceeding for the purposes of jurisdiction*." They submitted that Section 54 gives the Court a wide power to issue an interim measure in relation to arbitration proceedings whose seat is outside the Cayman Islands and therefore the Court had jurisdiction to issue an interim measure in relation to the Hong Kong Arbitration and the PRC Arbitration. The Plaintiffs noted that section 3(1) of the Arbitration Act made it clear that the statutory provisions allowing the Court to order interim measures in section 43 of that Act only applied to arbitrations whose seat was the Cayman Islands and therefore were not engaged in this case.

40. The Plaintiffs, as I understood their case, submitted that since they were seeking an interim injunction, the Court was required to apply the approach set out in *American Cyanimid v Ethicon Ltd* [1975] AC 396. But, since the injunction sought relief in anticipation of a threatened wrong, the additional requirements applicable to a *quia timet* injunction also needed to be considered and satisfied.

Section 54 was properly engaged

41. Section 54 states that:

> *"(1) A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their seat of arbitration is in the Islands, as it has in relation to the proceedings in court.*
>
> *(2) The court shall exercise those powers in accordance with its own procedures and in consideration of the specific principles of international arbitration."*

42. In their Supplemental Submissions filed after the hearing, the Plaintiffs noted that in its Final Report dated 4 January 2012 the Cayman Islands' Law Reform Commission (the ***Law Reform Commission***) had set out a summary of the results of its consultation on the draft Arbitration Bill 2012 which included comments from the Law Society's Sub-Committee on Arbitration. The Sub-Committee had commented on clause 52(1) of the Bill (which subsequently became Section 54) as follows (underlining added):

> *"This provision appears to follow Article 17J of the Model Law, but is missing some key words: it should say "A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in [the Cayman Islands], as it has in relation to proceedings in courts." The missing words should be included in order to give full and proper effect to this provision, which would allow the Grand Court to grant interim measures in support of foreign arbitrations."*

43. The Plaintiffs noted that Article 17J of the L Model Law is in the following terms:

> *"Article 17 J. Court-ordered interim measures*
> *A court shall have the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their place is in the territory of this State, as it has in relation to proceedings in courts. The court shall exercise such power in accordance with its own procedures in consideration of the specific features of international arbitration."*

44. The Plaintiffs noted that it was clear that Section 54(1) as enacted followed the first sentence of Article 17J and incorporated the suggested amendments to the draft clause, modified to refer to the seat rather than the place of the arbitration and that the statutory language appeared to be based on the provision in the Model Law.

45. The Plaintiffs further noted that Section 54(2) appeared to have enacted the second sentence of Article 17J, save that instead of the court being required to exercise its powers in consideration of the specific *features* of international arbitration, Section 54(2) required the Court to do so in consideration of the specific *principles* of international arbitration. It was not apparent, the Plaintiffs said, why the wording of Article 17J was not followed in its entirety and what distinction, if any, the legislature sought to draw between the specific features and principles of

international arbitration. The Plaintiffs submitted that there was no distinction of substance between the wording in Article 17J and Section 54(2).

46. The Plaintiffs referred to [30] of the explanatory note in Part Two of the Model Law (the ***Note***) addressed Article 17 J in the following terms (underlining added):

> *"Section 5 includes article 17J on interim measures ordered by courts in support of arbitration, and provides that "a court shall have the same power of issuing an interim measure in relation to arbitration proceedings irrespective of whether their place is in the territory of the enacting State, as it has in relation proceedings in courts". That article has been added in 2006 to put beyond any doubt that the existence of an arbitration agreement does not infringe on the powers of the competent court to issue interim measures and that the party to such an arbitration agreement is free to approach the court with a request to order interim measures."*

47. The Plaintiffs submitted that Section 54 was based on Article 17J of the Model Law and its purpose was to provide parties to an arbitration agreement with the freedom to apply to the Court for interim measures, notwithstanding that such measures might be able to be granted by the arbitral tribunal. It gave the Court in a case involving an international arbitration the power to grant the same interim relief that it could grant in ordinary, non-arbitration, proceedings brought before it. The Court was required to apply its usual rules and procedures applicable to such ordinary applications before it but must also have regard to the international arbitration context by taking into account specific principles of international arbitration rules and practice. The Plaintiffs said that there was no authority in this jurisdiction on the meaning of the phrase "*the specific principles of international arbitration*" and suggested that guidance as to the relevant principles could be found in the authoritative textbooks on international arbitration law and practice, such as *Redfern & Hunter: Law and Practice of Commercial Arbitration* (currently in its seventh edition). They accepted (as I understood their case) that one such principle was that the Court's powers were to be exercised in support and aid of the foreign arbitration.

48. In this case, the Court was empowered to grant an interim *quia timet* injunction subject to the Court being satisfied that the usual requirements for granting such relief in litigation before it were satisfied and that the additional requirements of Section 54 were also satisfied.

49. The Plaintiffs submitted that these additional requirements of Section 54 were established in this case.

50. First, the relief they sought was in aid of the PRC Arbitration. They argued that the dispute regarding Minsheng's rights to enforce the Charges in circumstances where the deduction

arrangements and mechanism set out in clause 14(4)(2) of the 2018 Loan Agreement and clause 13(4)(2) of the 2019 Loan Agreements had come into effect so as to discharge the Loans was a dispute arising from the implementation of or related to the Loan Agreements and was therefore covered by the dispute resolution clauses in the Loan Agreements. The Plaintiffs had specifically referred this issue to arbitration in the PRC Request for Arbitration (see [19] which asserted that Minsheng was not entitled to enforce the Charges). If the Plaintiffs are right (and obtain the award they seek from the CIETAC arbitral tribunal) there are no secured liabilities outstanding and they are entitled to have the Charges released. The PRC Arbitration will establish that there is no secured debt and it will automatically follow that Minsheng has no right to enforce the Charges. This was an issue properly before the CIETAC arbitral tribunal.

51. The injunctive relief the Plaintiffs sought from the Court was needed to protect the rights they sought to enforce and the claims they had made in the PRC Arbitration. To protect that position and right, the Plaintiffs needed to restrain Minsheng from taking steps to enforce the Charges, which, as a matter of contract under the terms of the Loan Agreements, it will shortly be permitted to do. If Minsheng were permitted to enforce the Charges before the conclusion of the PRC Arbitration, the benefit of the award would be substantially undermined.

52. This, as I understood it, was the Plaintiffs' primary position although on occasions it appeared that they equivocated on the proper scope of the PRC Arbitration. For example, they said at [58] of their Outline Submissions that "*The remit of the Hong Kong Arbitration is limited to issues arising under the SPA. The remit of the PRC Arbitration extends only to the Loan Agreements. Neither extends to a consideration of the Charges. Accordingly the Arbitrators have no jurisdiction to make interim orders in relation to them: that jurisdiction is entrusted to the Cayman Court.*" This appears to be inconsistent with the position adopted by the Plaintiffs in the PRC Request for Arbitration and elsewhere in their submissions. But it was open to the Plaintiffs to argue in the alternative, and this may have been what they were saying, that even if the dispute relating to the impact of the exercise of the Put Option and of the deduction arrangements and application mechanism in the Loan Agreements on Minsheng's right to enforce the Charges was outside the scope of the PRC Arbitration, that did not prevent the Plaintiffs' application for an interim injunction being in aid of the PRC Arbitration. If and to the extent that it can properly be said that the injunctive relief is needed to ensure that the Plaintiffs' rights consequential upon an award made by the CIETAC arbitral tribunal (and to preserve the value of the award to the Plaintiffs) it can still be said to be sought in aid of the PRC Arbitration.

53. Secondly, the application to this Court for an interim injunction was both in accordance with the local procedures governing applications of this sort and consistent with "*specific principles of international arbitration*." It was in accordance with such principles for a party to an arbitration to apply to a court for injunctive relief when that was needed urgently and there was some reason why the relevant arbitral tribunal was unable to award interim remedies. In this case, the Plaintiffs submitted, there had been a delay in the formation of the CEITAC arbitral tribunal because of Minsheng's action in seeking a suspension of the arbitration and as a result it was not possible for the Plaintiffs to apply in the PRC Arbitration for interim measures. It was also appropriate for the Plaintiffs to apply to this Court rather than to the Beijing court as the supervisory court of the PRC Arbitration. The Charges are governed by the law of the Cayman Islands, the parties to the Charges had submitted to the jurisdiction of this Court, albeit on a non-exclusive basis and the charged property, being sharers in a Cayman company, was located in the Cayman Islands. If interim measures were to be sought from and granted by the CEITAC arbitral tribunal when constituted (or the Beijing court, even assuming that was possible) there would be a need for international enforcement of the award or order of the CEITAC arbitral tribunal (or the Beijing court) and it was recognised in the textbooks on international arbitration that the need for international enforcement was (or could be) a good reason for not first applying to the arbitral tribunal for interim measures. The Plaintiffs said in their Outline Submissions (at [57]) that it was "*precisely because international enforcement is required that the current application has been made to the Cayman Court*." They relied on the following passage in *Redfern & Hunter* at [7.34] (underlining added).

> "*Where the position is not spelled out clearly by the national law or by institutional rules, the answer to the question of whether to seek interim relief from the court or from the arbitral tribunal is likely to depend upon the particular circumstances of each case. If, for example, the tribunal has not been constituted, the matter is one of urgency, and there is a concern that an order by an emergency arbitrator may not be voluntarily executed, the only possibility is to apply to the relevant national court for interim measures. At the same time, the party seeking such an order should take steps to advance the arbitration, so as to show that there is every intention of respecting the agreement to arbitrate. Where the arbitral tribunal is in existence, or where the appointment of an emergency arbitrator is possible and likely to be effective, it would be appropriate to apply first to that tribunal or emergency arbitrator unless international enforcement may be required."*

54. The Plaintiffs accepted that the specific principles of international arbitration included the principle that the Court should only be involved to a limited extent and should generally require applications for interim remedies to be made first to the arbitral tribunal save in exceptional circumstances but also the principle that the Court must not grant relief that would prejudge the merits of the case that had been or was to be submitted to arbitration (citing *Redfern & Hunter* at [7.52]). However, this principle was being observed in the present case. The proposed injunction

would maintain the status quo and hold the ring pending the determination by the CIETAC arbitral tribunal (and the Hong Kong arbitral tribunal) of the issues submitted to arbitration. The injunctive relief is interim in that sense and did not pre-judge the correctness or otherwise of the Plaintiffs' interpretation of the SPA and Loan Agreements or other matters before the arbitrators.

The American Cyanimid test

55. As regards the *American Cyanimid* test, the Plaintiffs argued that they needed to establish that there was a serious issue to be tried but once they had crossed that threshold they also needed to establish that it was just for the Court to grant the injunction. They relied on the following extract from Chapter 2 Section (5)(i) of *Gee on Commercial Injunctions* (7th ed.):

> *"The first question is whether if the claimant were correct at trial, an award of damages would be an adequate remedy. If damages in the measure awarded at common law would be an adequate remedy, and the defendant would be in a financial position to pay them, then, however strong the claimant's case appeared to be, no injunction should "normally" be granted. This is because there are no grounds for interference with the defendant's freedom of action by the grant of an injunction.*
>
> *The second question is whether if the injunction was granted and the defendant was successful at trial damages under the cross-undertaking would be an adequate remedy. If damages in a measure which would be recoverable under the cross-undertaking would be an adequate remedy and the claimant would be in a financial position to pay them (or provide security for them) then there would be "no reason on this ground" to refuse an interim injunction.*
>
> *The third question which is balance of convenience only arises when there is doubt as to the adequacy of the remedy of damages available to either party or to both. The court then has to engage in trying to predict whether granting or withholding an injunction is more or less likely to cause irremediable prejudice (and to what extent) if it turns out that the injunction should not have been granted or withheld, as the case may be. "The basic principle is that the court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other."*
>
> *There can be no exhaustive list of the factors which can play a part in assessing the balance of convenience, or the weight to be attached to a factor. The fundamental objective of the court, when weighing up all the factors, is to take the course which involves the least risk of injustice at the end of the day, if the court's decision to grant or refuse an injunction should turn out to have been "wrong" by reference to the final result at trial.*
>
> *The principles are "guidelines", and not a "straitjacket", where the function of the court is to hold the position as justly as possible pending final determination of a triable issue at trial."*

56. The Plaintiffs argued that there is a serious issue to be tried as to whether they have effectively exercised the Put Option at the Plaintiffs' Purchase Price and have applied the amounts due under the Loan Agreements in part satisfaction of that price payable by Minsheng pursuant to the Put

Option. It was clear from the formulation of their case in the Hong Kong Arbitration and the PRC Arbitration that the Plaintiffs were making cogently argued and properly substantiated claims which were at least reasonably arguable and more than fanciful. The statement of claim in the Hong Kong Arbitration and the PRC Request for Arbitration showed that there were serious issues to be tried in both of the Arbitrations.

57. The Plaintiffs said that having shown that there was a serious issue to be tried in relation to their claim for relief in the Arbitrations, the other elements of the *American Cyanimid* test were also satisfied.

58. For the reasons I have already summarised, the Plaintiffs said that damages would be an inadequate remedy if they succeeded in the Arbitrations and Minsheng had been allowed before then to enforce the Charges (and, for example, sell the Second Tranche, perhaps with the First Tranche, to a third-party or even a connected purchaser). If that was permitted then there was a real risk that since the Second Tranche would not be available to be transferred to Minsheng, the amount payable by Minsheng would not be reduced by value of the Second Tranche, thereby increasing the quantum of Minsheng's liability in circumstances where Minsheng's ability to pay such a liability was seriously in doubt. Furthermore, in at least one set of foreseeable circumstances allowing Minsheng improperly to enforce the Charges would deprive the Plaintiffs of their proprietary rights in the Second Tranche and destroy their equity of redemption in those shares. As I have explained, the Plaintiffs assert that if they succeed in the Arbitrations, the Charges will fall away and they will become the absolute owners of the Second Tranche. If Minsheng is allowed to enforce the Charges and sell the Second Tranche, it is likely that the Plaintiffs will be unable to have the Second Tranche retransferred back. There would then be an issue as to the date on which the Plaintiffs' claim to damages (or equitable compensation) from Minsheng would be calculated and because of the rapid decline (and movements) in the price of the Second Tranche, the Plaintiffs may find that they are not compensated for their full loss (and that their right to recover the Plaintiffs' Purchase Price in accordance with the SPA might be lost so that they would only receive a substantially reduced sum for the Second Tranche).

59. The Plaintiffs argued that the balance of convenience was in favour of maintaining the status quo by preventing the Charges from being enforced. This would avoid the serious prejudice to the Plaintiffs flowing from an impermissible enforcement in breach of the Charges by Minsheng. Minsheng had not adduced evidence to show that it would suffer any prejudice if enforcement of the Charges was delayed during the continuation of the Arbitrations.

60. The Plaintiffs also submitted that Minsheng was wrong to oppose the granting of the injunctive relief they sought on the ground that such relief could only be granted against a chargee if the chargor paid the full amount of the secured liabilities into Court or in reliance on the authorities that decide that injunctive relief was not available to a chargor who had a cross-claim against the chargee in a sum equal to or greater than the secured debt. Both rules did not apply where the chargor claimed (and had raised a serious issue to be tried on the point) that the secured liabilities were discharged in full by reason of a contractual term (in the agreements constituting and governing the secured liabilities) binding on the chargee. This was the case here. The Plaintiffs were not, they said, relying on a cross-claim or set-off in equity (even though an equitable set-off might be sufficient to justify injunctive relief since it resulted in an immediate discharge of both cross-claims). They were relying on a contractual set-off provision or a term requiring a deduction from and extinguishment of the liabilities of the PRC Borrower under the Loans. The Court would not permit a chargee to enforce its security where the chargor maintained a properly arguable case that there was no secured debt and enforcement would gravely and irreparably prejudice the mortgagor. That was the case here.

The requirements for a quia timet injunction

61. The Plaintiffs also submitted that the requirements for a *quia timet* injunction were also satisfied in this case. They argued that the test for the grant of such an injunction had been set out by Justice Kawaley in this Court in *Frontera Resources Corporation v Hope* (unreported, FSD 193 of 2018, 27 February 2019). At [34], Justice Kawaley noted that the Plaintiffs had argued (and he appears to have accepted) that a *quia timet* injunction would only be granted "*if the normal American Cyanamid requirements for an interim injunction are met and in addition, the Court is convinced that there is a strong probability that, unless restrained the Plaintiffs will do something which will breach the Defendants' rights and cause them irreparable harm."* Justice Kawaley then referred to the judgment of Marcus Smith J of the High Court in London in *Vastint Leeds BV v Persons unknown* [2019] 4 W.L.R. 2 and said this:

> *"36. The second passage in Marcus Smith J's judgment which counsel relied upon was the following (at page 9 of the transcript):*
>
> > *"(3) When considering whether to grant a quia timet injunction, the court follows a two-stage test:*
> >
> > *(a) First, is there a strong probability that, unless restrained by injunction, the defendant will act in breach of the claimant's rights?*

> (b) *Secondly, if the defendant did an act in contravention of the claimant's rights, would the harm resulting be so grave and irreparable that, notwithstanding the grant of an immediate interlocutory injunction (at the time of actual infringement of the claimant's rights) to restrain further occurrence of the acts complained of, a remedy of damages would be inadequate?"*

> 37. *The tests relied upon by Mr Hayden were formulated, both by Patten LJ and Smith J in the context of permanent injunctive relief being considered at trial. For present purposes (an interim injunction initially sought for approximately 14 days), I prefer to adopt (as regards the degree of risk which must be established) the minimum standard formulated by Stephen Gee (and quoted by Marcus Smith J at paragraph 29), namely that "there must be at least some real risk of an actionable wrong." That risk requirement must of course be accompanied by proof that damages would not be an adequate remedy for any loss occasioned by an actual breach of the applicant's rights."*

62. Justice Kawaley then addressed the Court's approach on an interlocutory (or interim) application:

> *"39. The interlocutory test for irreparable harm is also somewhat different to that which applies at permanent injunction stage. The question is would damages be an adequate remedy for the [applicant] in the event of his succeeding at trial American Cyanimid at 408C-D. Only if the Defendants established a risk of loss for which damages would not be an adequate remedy would the Court have to consider the corresponding loss that the Plaintiffs might suffer and the adequacy of the Defendant's cross-undertaking."*

63. Accordingly, the Plaintiffs argued, the Court needed to be satisfied that there must be at least some real risk of actionable wrong and that damages were not an adequate remedy for the applicant in the event of his succeeding at trial. In considering whether damages are an adequate remedy the Court was required to ask itself whether it was just in all the circumstances that a plaintiff be confined to his remedy in damages (citing the English Court of Appeal decision of *AB v CD* [2014] EWCA Civ 229 per Ryder LJ at [32]).

64. The Plaintiffs submitted that the requirement to show a real risk (a strong probability) that Minsheng will act in breach of the Plaintiffs' rights was satisfied. There was a real risk that Minsheng, unless restrained by an injunction, would act in breach of the Plaintiffs' rights as chargors under the Charges by taking steps to enforce the Charges. Minsheng will very shortly have the contractual right to enforce the Charges because the First Loan fell due for repayment on 27 June 2023, with a grace period of a further 30 days permitted for the PRC Borrower to make payment. The Plaintiffs submitted (see Li 1 at [47] and Li 2 at [29]-[30]) that the Court could infer from Minsheng's refusal to extend its undertaking beyond the determination of the Originating Summons and its opposition to the injunction that it wished to be able and intended

to exercise its enforcement rights under the Charges (in part in order to be able to improve its position by substituting the current and reduced market value of the Second Tranche for the value calculated in accordance with the SPA and to undermine the Plaintiffs' claim for specific performance of the SPA and to retain the Second Tranche in the event that Minsheng was unsuccessful in the Arbitrations and failed to pay what was awarded by the arbitrators).

65. The Plaintiffs further submitted that they would suffer grave and irreparable harm if required to wait until Minsheng acted in breach of the Charges. Minsheng would have the right immediately upon the power of sale (or other enforcement remedy) becoming exercisable to sell the Second Tranche and so post-breach relief could not prevent a sale or other transfer of the Second Tranche and thereby avoid the irreparable harm which they say they will suffer following such a sale or transfer, which I have already described.

Minsheng's submissions

Minsheng's position in summary

66. Minsheng's position can be summarised as follows:

(a). Minsheng agreed that Section 54 was modelled on Article 17J of the Model Law and that the Explanatory Note to that article was a relevant guide to its purpose.

(b) the Plaintiffs had failed to show that Minsheng's right to enforce the Charges was the subject of any disputed issues in either of the Arbitrations. Indeed, the Plaintiffs had not clearly explained their case as to how the Charges related to the Arbitrations. The relief now sought by the Plaintiffs in respect of the Charges was outside the legitimate scope of the PRC Arbitration (since the Charges contain non-exclusive Cayman jurisdiction clauses) and therefore outside section 54. The Court had no jurisdiction to grant that relief based on Section 54.

(c). even if enforcement of the Charges was a matter falling within the scope of the Arbitrations, the Plaintiffs had failed to explain why they had not first applied to the arbitral tribunals to seek the relief they now seek from this Court. In fact, there was no proper justification for the failure to do so and for that reason the Court should not grant the relief sought. Nor was an injunction necessary to protect the Arbitrations.

(d). Minsheng has not threatened to sell or dispose of the secured shares. The Plaintiffs had failed to establish that there was a real risk of an actionable wrong. The Plaintiffs were not entitled, as a matter of Cayman Islands law, to an interlocutory injunction to prevent enforcement of the Charges. No injunction could be given without the Plaintiffs paying the full amount of the secured liabilities into Court.

(e). in this case damages would be an adequate remedy. The Plaintiffs maintained a claim for the Purchasers' Purchase Price and if correct would have a claim for the balance of that sum after deduction of the Loans. Even if Minsheng went ahead and enforced the Charges, any loss suffered by the Plaintiffs could be compensated in damages and the Plaintiffs had failed to show that Minsheng would not be good for such damages.

(f). Minsheng already had control of the Second Tranche pursuant to the Equity Entrustment Agreement and so there was little concern over disrupting the status quo if Minsheng was allowed to enforce the Charges.

(g). Minsheng disputed the Plaintiffs' characterisation of the agreement set out in the SPA and the other related documents. It did not accept that the SPA should be seen as involving a two-stage sale of all the shares in the Company. It did not accept that the Plaintiffs had exercised the Put Option (an issue for the Hong Kong arbitrators). It did not accept that the Loans were to be treated as a downpayment on the price payable upon a valid exercise of the Put Option. Furthermore, Minsheng disputed the Plaintiffs' claim that the liabilities owed by the PRC Borrower to the PRC Lender could be applied in discharge the liabilities of Minsheng to the Plaintiffs. There was also a dispute as to whether the Charges secured the liabilities owed under the 2019 Loan Agreement, which Minsheng considered they did. Minsheng's position had been set out in its statement of defence and counterclaim, and its reply to the Plaintiffs' defence to the counterclaim in the Hong Kong Arbitration.

The scope of the Section 54 jurisdiction and the impact of the different arbitration/choice of court clauses in the various agreements

67. Minsheng argued that either the Plaintiffs were right that the relief they seek is needed in aid of the Arbitrations, in which case they should have first applied to the arbitral tribunals, or they are wrong as to the subject matter of the Arbitrations, so that the dispute relating to Minsheng's right to enforce the Shares is not covered by the Arbitrations, in which case the Plaintiffs were not entitled to rely on Section 54. They might have other grounds to seek relief, for example in

reliance on the Court's jurisdiction to grant freezing injunctions but the Plaintiffs had not sought relief on the basis of or made out a case in accordance with that jurisdiction.

68. Minsheng's position was that the dispute regarding its right to enforce the Charges was not covered by either Clause 22.2 of the SPA (which refers to the Hong Kong Arbitration "*Any dispute arising out of or in connection with the execution, performance or interpretation of*" the SPA) or the arbitration clauses in the Loan Agreements (which refer to the PRC Arbitration "*All disputes arising from or in connection with the implementation of this Agreement or related to this Agreement")*. Minsheng noted that the Plaintiffs had sought in the PRC Arbitration an order to restrain enforcement of the Charges (see the last sentence of [19] of the PRC Request for Arbitration). Minsheng argued that it would be an impermissible exercise, and be in excess, of their jurisdiction for the PRC arbitrators to adjudicate on the dispute regarding its right to enforce the Charges.

69. Minsheng submitted that clause 18.1 of the Charges entitled it to serve process and commence judicial proceedings to enforce the terms of each of the Charges. They did not entitle either party to submit a dispute about enforcement to arbitration. They did not entitle the Plaintiffs to have the enforcement issue determined in the Hong Kong Arbitration. In any event, the Arbitrations did not in substance raise or deal with any dispute about the terms or validity of the Charges. The disputes in the Arbitrations concern whether the Plaintiffs are entitled to claim a set-off under the Loans and this in turn depended on whether the Plaintiffs were entitled to invoke clause 8.1 of the SPA (without which there was no entitlement of set-off). Those disputes will be separately determined sometime in the future pursuant to the arbitration clauses in the SPA and the Loan Agreements. The Charges must be given their own sphere of operation. The disputed question in relation to the Charges is whether under clause 7 of each of the Charges the conditions for enforcement arise. The Charges contain a Cayman jurisdiction clause and it was significant that the parties (sophisticated parties advised by lawyers) had decided that disputes about the Charges should be determined in judicial proceedings by the courts and not by arbitrators dealing with the SPA or the Loans. In considering whether an ancillary injunction was available at all, full effect should be given to the choice of forum set out in the Charges which must necessarily govern its enforcement.

70. Minsheng relied on the judgment of Gross J (as he then was) in *Secretary of State for Transport v Stagecoach SW Trains* [2009] EWHC 2431 (Comm), the judgment of the English Court of Appeal in *BNP v Trattamento Rifuti Metropolitani SPA* [2019] EWCA Civ 768 and

the commentary in Lewison, *Interpretation of Contracts* 7th ed at pages 947-948. In *BNP* Hamblen LJ summarised the correct approach to such cases (underlining added):

> *"(1). Where the parties' overall contractual arrangements contain two competing jurisdiction clauses, the starting point is that a jurisdiction clause in one contract was probably not intended to capture disputes more naturally seen as arising under a related contract …*
>
> *(2). A broad, purposive and commercially-minded approach is to be followed …*
>
> *(3). Where the jurisdiction clauses are part of a series of agreements they should be interpreted in the light of the transaction as a whole, taking into account the overall scheme of the agreements and reading sentences and phrases in the context of that overall scheme …*
>
> *(4). It is recognised that sensible business people are unlikely to intend that similar claims should be the subject of inconsistent jurisdiction clauses …*
>
> *(5). The starting presumption will therefore be that competing jurisdiction clauses are to be interpreted on the basis that each deals exclusively with its own subject matter and they are not overlapping, provided the language and surrounding circumstances so allow …*
>
> *(6). The language and surrounding circumstances may, however, make it clear that a dispute falls within the ambit of both clauses. In that event the result may be that either clause can apply rather than one clause to the exclusion of the other … ."*

71. Minsheng submitted that there was no reason to depart from the usual starting point. The assumption was that the arbitration clause in the SPA and the jurisdiction clause in the Charges each dealt exclusively with their own subject matter. No injunction was necessary to protect the Arbitrations which could not properly be concerned with enforcement of the Charges. The fact that one party had chosen to invite the arbitral tribunal to exceed its jurisdiction in derogation of the jurisdiction clause in the Charges did not require this Court to grant an injunction to protect the excess of jurisdiction.

72. But, Minsheng said, if it was wrong on this, relief under Section 54 was generally only available where, in the absence of agreement of all parties, an application had been made to the relevant arbitral tribunal and permission to apply under Section 54 had been given by that tribunal. Minsheng referred to chapter 17 at pages 2711-57 of the leading text on international arbitration by Mr Gary Born, *International Commercial Arbitration* (3rd ed Kluwer) which it considered provided helpful guidance as to what constituted specific principles of international arbitration in this context. Minsheng noted that it was stated, in connection with foreign arbitrations, that even when the court had a power to grant interim remedies "*there [were] strong reasons for exercising such power with circumspection because it runs a double risk of acting at cross purposes with the arbitral proceedings and the supervisory jurisdiction of the courts in the*

arbitral seat" (see page 2751). Reference was made to *Channel Tunnel* in support of this proposition and it was noted that courts should consider whether the arbitral tribunal that has been constituted and/or the courts of the seat had jurisdiction and/or have the power to make orders. Minsheng argued that it was clear that the purpose of Section 54 was to assist foreign arbitration proceedings and that the jurisdiction established by the section was purely ancillary to the arbitration in support of which the relevant application was made. Section 54(2) required the Court to exercise its powers "*in consideration of the specific principles of international arbitration"* and one of those principles was that the powers of the court should be limited to assisting the arbitral process and should not usurp or interfere with it. This meant in the context of interim remedies that the restrictions on and conditions to applications to court for interim remedies, imposed in a number of major jurisdictions, should be treated as applicable in cases under Section 54. Minsheng accepted that there was no Cayman case law dealing with or other authoritative guidance as to the meaning of "*specific principles of international arbitration"* but argued that guidance as to the proper approach and what was required of a court fulfilling only an ancillary and supportive role was to be found by analogy with the regime established by section 44 of the UK's Arbitration Act 1996 (the ***UK Act***). This section sets out the English court's powers exercisable in support of arbitration proceedings, which powers could be exercised in the case of foreign arbitrations. Section 44 was subject to two sets of restrictions. First, the section itself limited the circumstances in which the court could intervene. Secondly, the court was able to decline to exercise its powers in the case of foreign arbitrations where appropriate.

73. Section 44(3) provides that if the application for interim relief is urgent, the court may make such orders as it thinks necessary for the purpose of preserving evidence or assets. Section 44(3) provides that in other cases "the court shall act only on the application of a party to the arbitral proceedings (upon notice to the other parties and to the tribunal) made with the permission of the tribunal or the agreement in writing of the other parties." Section 44(5) provides that in any case "*the court shall act only if or to the extent that the arbitral tribunal, and any arbitral or other institution or person vested by the parties with power in that regard, has no power or is unable for the time being to act effectively*."

74. By section 2(3) of the UK Act these powers are available even where the seat of the arbitration is outside England and Wales but "*the court may refuse to exercise any such power if, in the opinion of the court, the fact that the seat of the arbitration is outside England and Wales .... makes it inappropriate to do so*."

75. Minsheng relied on the following passage from the judgment of Clarke LJ in the English Court of Appeal in *Cetelem SA v Roust Holdings Ltd* 2005] 1 WLR 3555 [71] (a case in which the parties were subject to an agreement governed by English law which provided for the resolution of disputes by ICC arbitration in London and in which one party applied to the English court pursuant to section 44(3) of the UK Act for an interim mandatory injunction requiring the other party to submit its application for approval of the agreement to the Russian Central Bank):

> *"The whole purpose of giving the court power* to *make such orders is* to *assist the arbitral tribunal in cases of urgency or before there is an arbitration on foot. Otherwise, it is all too easy for a party who is bent on a policy of non-cooperation to frustrate the arbitral process. Of course, in any case where the court is called upon to exercise the power, it must take great care not to usurp the arbitral process and* to *ensure, by exacting appropriate undertakings from the claimant, that the substantive questions are reserved for the arbitrator or arbitrators."*

76. Minsheng submitted that one principle to be derived from section 44 was that in international arbitration the parties and courts must primarily look to the arbitral tribunal and the supervising courts in the seat of the arbitration for the grant of interim remedies. Applications for interim relief should be made to these bodies absent a sound and solid reason justifying a failure to do so. There was none here (assuming that Minsheng was wrong on its primary case that the dispute in relation to the Charges was not covered by the Arbitrations). The rules of the Hong Kong Arbitration gave the arbitral tribunal to order interim measures. Such measures would be binding on Minsheng. Minsheng had withdrawn its challenge to the PRC Arbitration which would not in any event have prevented the Plaintiffs from applying for emergency interim relief in the PRC Arbitration and the Plaintiffs had not shown that such relief was not available.

77. Minsheng accepted that if the Court was satisfied that the dispute regarding its rights to enforce the Charges was subject to the Arbitrations so that an application under Section 54 could properly be made, then the ordinary *American Cyanimid* principles applied. These were summarised by Mangatal J in her judgment in *Re Xie Zhikun & Ors v XiO GP Limited & Others* (unreported, 9 June 2017) as follows:

> "*a. Is there a serious issue to be tried; do the Plaintiffs have a real prospect of succeeding in their claim for permanent injunctions at the trial?*
>
> *b. If there is a serious issue to be tried, will the Plaintiffs be adequately compensated by damages for the loss they would have sustained as a result of the Defendants continuing to do that which it was sought to be enjoined, and are the Defendants in a position to pay the damages?*
>
> *c. If damages would not provide an adequate remedy for the Plaintiffs,*

> *if the Defendants were to succeed at trial, would [the Defendants] be adequately compensated under the Plaintiffs' undertaking as to damages?*
>
> *d. It is where there is doubt as to the adequacy of the respective remedies in damages available to either party or to both, that the question of the balance of convenience arises.*
>
> *e. Where other factors appear to be evenly balanced it is a counsel of prudence to take such measures as are calculated to preserve the status quo.*
>
> *f. The Court should take whichever course seems likely to cause the least irremediable prejudice to one party or the other." (emphasis added)*

The Plaintiffs had failed to show that all elements of the American Cyanimid test were satisfied or that they were entitled to quia timet relief

78. Minsheng argued that there was no real risk of it committing an actionable wrong. It did not, as I understood its case, press the point that there was insufficient evidence that it intended if able to do so to enforce the Charges and sell the Second Tranche. However, Minsheng did argue that the authorities established that an interim injunction would not be granted against a chargee to prevent it enforcing its security on the ground that the chargor had a cross-claim (or even a set-off) equal to or in excess of the secured debt. Minsheng submitted that these authorities applied in this case to preclude the grant of the injunction sought by the Plaintiffs.

79. Minsheng argued that in general a chargee's (or a mortgagee's) claim to enforce a charge (or mortgage) could not be defeated by a cross-claim or a set off. The chargee would have to place the whole money claimed into court. Minsheng relied on *Inglis v Commonwealth Trading Bank of Australia* [1972] 126 CLR 161, *Mobil Oil v Rawlinson* [1981] 43 P&CR 221 at pages 226-7 and *Ashley Guarantee v Zacaria* [1993] 1 WLR 62. The charge remained in full force and effect until the money due has been tendered and accepted (see *Cukurova Finance Intl Ltd v Alfa Telecom Turkey Ltd (No 3 to 5)* [2016] AC 923 per Lord Neuberger at [80]). The general rule that the debt must be paid into Court was an important aspect of domestic policy applicable to maintain confidence in security. Any other rule would substantially diminish the value of security. The chargor was not deprived of its remedy as it was always open to it to fall back on a remedy in damages.

80. The relevant principle was explained by Nourse J in *Mobil Oil v Rawlinson* as follows (underlining added):

"In reference to the possibility of a counterclaim or a set off arising out of the mortgage there appears this footnote [in Fisher and Lightwood's Law of Mortgage (9th ed., 1977)]:

> *(d) even an admitted liquidated claim which exceeds the mortgage does not per se discharge the mortgage and is no reason for adjourning the application: Samuel Keller (Holdings) Ltd. v. Martins Bank Ltd. ... See also Inglis v. Commonwealth Trading Bank of Australia ... But where the amount due under the mortgage is determined by some other transaction between the parties, e.g. where the mortgage is to secure the amount owing from time to time for goods supplied by the mortgagee to the mortgagor, the possession claim may be adjourned, if the mortgagor has a cross-claim for goods supplied to the mortgagee.*

Mr. Picarda relies strongly on the proposition embodied in the second part of that footnote. He accepts that it is not supported by any authority, but he says that it is consistent with principle and ought to govern this case. The essence of Mr. Picarda's argument is that the set off claimed by the defendant goes to the root of his secured floating indebtedness to the plaintiffs, and enables him to claim that there is in truth no such debt in existence. It is on that ground that Mr. Picarda seeks to distinguish Samuel Keller (Holdings) Ltd. v. Martins Bank Ltd. and Inglis v. Commonwealth Trading Bank of Australia , which are the two cases referred to in the first part of the footnote.

I am prepared to assume in the defendant's favour that the amount of his cross-claims exceeds the amount of the mortgage debt. I say at once that I regard that as an assumption of extremely doubtful validity—on the master's estimate there is a shortfall of about £8,000—but I will make it nonetheless. However, I find it impossible to make any distinction between this case and Samuel Keller (Holdings) Ltd. v. Martins Bank Ltd. Megarry J.'s statement of the principle 11 which was expressly approved by the Court of Appeal, is in entirely general terms. The principle is that a mortgagor cannot unilaterally appropriate the amount of a cross-claim, even if it is both liquidated and admitted, and a fortiori if it is unliquidated or not admitted, in discharge of the mortgage debt. On that footing the origin and nature of the cross-claim and its relationship to the mortgage debt are wholly irrelevant.

In the circumstances this case must be approached on the footing that when the matter came before the master there were substantial arrears outstanding. Consistently with the general rule established in Birmingham Citizens Permanent Building Society v. Caunt 12 he ought then to have made an unconditional order for possession, unless of course he was satisfied that there was a reasonable prospect of the defendant's paying the arrears in full, not into court but to the plaintiffs, or otherwise satisfying the plaintiffs, in which case he should have adjourned the application for a short time.

It follows that I must disapprove the proposition embodied in the second part of the footnote in Fisher and Lightwood's Law of Mortgage and also in one in almost identical terms in Halsbury's Laws of England. I should add that even without the authority of Samuel Keller (Holdings) Ltd. v. Martins Bank Ltd., which was not concerned with a claim for possession, I would regard the proposition as being unsound. If the general rule is that the mortgagee is entitled to possession unless there is a reasonable prospect of the mortgagor's paying him off in full or otherwise satisfying him within a short time I do not see how payment into court, even in full, or anything else for that matter, can be compliance with the rule. Any other view would only serve to perpetuate the former confusion between the unqualified right to possession and the state of the account between the mortgagor and the mortgagee.

> *I do not intend to suggest that there may not be other circumstances in which the court will refuse a mortgagee possession on terms that the mortgagor pays the full amount of the mortgage debt into court. A number of other possibilities are mentioned in the passage in Fisher and Lightwood's Law of Mortgage , which I have already read. Without attempting to decide any point which does not arise for decision in the present case, I will only say that it seems to me that that course could only be adopted in a case where there was a substantial question as to the existence or enforceability of the right to possession, for example where it was claimed that the mortgage was void for illegality or that the mortgagee was in some way estopped from asserting his right. It appears probable that Lidco Investments Ltd. v. Hale a case which falls within the former category."*

81. In *Samuel Keller (Holdings) Ltd. v. Martins Bank Ltd* [1971] 1 WLR 43 the mortgagor had bought from the mortgagee the issued shares in two companies and by a legal charge ranking after a mortgage in favour of a bank the mortgagor charged certain properties with repayment of a loan from the mortgagee. On default by the mortgagor, the mortgagee issued a writ in the Queen's Bench Division of the High Court in England claiming the first instalment of principal and interest but the mortgagor alleged breaches by the mortgagee of the conditions and warranties in the share contract and counterclaimed for a declaration that the mortgage debt had been discharged and cancelled. The bank exercised its power of sale and after discharging prior encumbrancers retained a balance for payment to the mortgagee, but the mortgagor requested the bank to pay it into court and not to the mortgagee. Accordingly, by writ issued in the Chancery Division against the bank, the mortgagee claimed an account to be taken and payment by the bank with interest of such sums as might be found due to the mortgagee in respect of the balance of the proceeds of sale. The bank issued an interpleader summons and Megarry J held that the mortgage remained in being despite the existence of the counterclaim and dismissed the mortgagor's application for a stay of the Chancery action. The Court of Appeal upheld Mr Justice Megarry's decision. Until the mortgage debt was discharged by actual payment and acceptance of the sum due it remained in existence and the mortgagee was entitled to any surplus proceeds of sale up to the amount due under the mortgage despite the counterclaim for unliquidated damages, since where parties used a system of payment under a contract which involved notional payment in full and a lending of a sum on mortgage, the mortgagee was not to be kept out of his express rights by allegations of some connected cross-claim which might prove unfounded. Megarry J had said this (underlining and emphasis added):

> *"Unless and until the mortgage in this case is discharged in the appropriate way upon actual payment and acceptance of the sum due, I think that the mortgage remains a mortgage, and that the mortgagee is entitled to any surplus proceeds of sale in the hands of the bank up to the amount properly due under the mortgage. A doctrine of the discharge of a mortgage debt by the existence or **unilateral appropriation** of an unliquidated claim is one to which I give no countenance: I regard it as neither convenient nor just. Even where there is a claim which is both liquidated and admitted, and it exceeds the mortgage debt in amount, it may be to the interest of one party or the other, or both, that the mortgage and the mortgage debt should continue in existence. The rate of interest may be attractively*

> *high or seductively low; there may be fiscal advantages in keeping the mortgage alive; there may be new projects to be financed which make liquid cash preferable to the satisfaction of mortgage debts; and so on. Nor have I heard any reason why it should be the mortgagor who is to have a* ***unilateral*** *power to discharge the mortgage debt by appropriation without payment."*

82. Minsheng argued that in the present case the disputed question was whether under clause 7 of each of the Charges the conditions for enforcement arise. The Plaintiffs contend that under the Loans they are entitled to the right to set off their liability against the sum due under Clause 8.1 of the SPA. The claims made by the Plaintiffs in the Arbitrations were no different from the undetermined counterclaims which have been held in these authorities not to support an interlocutory injunction to restrain enforcement of a mortgage. The fact that they were the subject of arbitration did not give them any greater status to prevent enforcement.

83. Minsheng also argued that damages were plainly an adequate remedy. The relief which the Plaintiffs seek in the Arbitrations is not to retain or be given back the Second Tranche but to be awarded the Plaintiffs' Purchase Price or damages:

(a). the Plaintiffs plainly want to be paid the maximum price for which they are arguing in the Hong Kong Arbitration which they say is due under the SPA. Minsheng denies that there is any entitlement under clause 8.1 of the SPA.

(b). if there is any equity of redemption after the payment of Loans (that is, if the Second Trance is worth more that the Loans) and Minsheng improperly enforces the Charges (and is subsequently held to have had no right to do so) then it will be liable to the Plaintiffs for their loss. This will be based on the market value of the Second Tranche (which Minsheng says will be a sum which is a great deal less than the Plaintiffs' Purchase Price which it claims to be inflated and unjustifiable).

84. This means, Minsheng argues, that the dispute between the parties is only about damages. Damages will fully protect and compensate the Plaintiffs. They do not need and are not entitled to an injunction.

85. Minsheng also argued that there was no reason why the Court should grant an injunction when the status quo is that Minsheng has possession and control of the Second Tranche over which it has security. Minsheng has not threatened to sell the Second Tranche and accepts that if it enforced its security (the Charges) it would have to give credit for the market value of

the Second Tranche.

Discussion and decision

The issues

86. The following main issues arise for decision:

(a). what is the proper interpretation and effect of Section 54 – what do the Plaintiffs need to establish in order to obtain relief pursuant to Section 54?

(b). on the basis that the Plaintiffs are properly able to seek relief under Section 54 and that an applicant for an interim injunction in aid of a foreign arbitration must satisfy the usual requirements for obtaining interim relief in litigation before the Court, have the Plaintiffs satisfied the *American Cyanimid* test and the additional requirements for *quia timet* relief?

(c). as regards the *American Cyanimid* test:

(i). have the Plaintiffs established a serious issue to be tried in relation to their claim that the Loans have been discharged and that there are no outstanding liabilities secured by the Charges?

(ii). have the Plaintiffs established that if Minsheng was permitted to enforce the Charges at this point, damages would not be an adequate remedy?

(iii). has it been shown that if the injunction is granted and Minsheng is successful in the PRC Arbitration damages under the Plaintiffs' cross-undertakings would be an adequate remedy? I note that there has been no challenge by Minsheng to the Plaintiffs' financial status and ability to meet any liabilities arising under their cross-undertaking in damages.

(iv). have the Plaintiffs shown that they are entitled to an injunction to restrain Minsheng from exercising its enforcement rights and powers under the Charges?

(d). as regards *quia timet* relief, have the Plaintiffs established that there is a real risk (or strong probability) that Minsheng will take steps to enforce the Charges and that they will suffer irreparable harm if an injunction preventing Minsheng from doing so is not granted now?

(e). should the Court grant the interim injunction sought by the Plaintiffs in the current circumstances having regard in particular to the fact that their application is made in the context of two international arbitrations and the need to have regard to specific principles of international arbitration as well as to the balance of convenience. Does the Plaintiffs' failure to apply for interim remedies to the arbitral tribunals or the local courts which exercise a supervisory jurisdiction in relation to the Arbitrations require or justify a refusal to grant the interim injunction sought?

Section 54 – its interpretation and effect

87. Mr Moverley Smith and Mr Lowe believe that this is the first case in which this Court has been asked to interpret and consider Section 54 although Justice Kawaley did refer to the section in *In the Matter of Principal Investing Fund I Ltd et al* (unreported 26 January 2023) in which the parties erroneously assumed that there was no statutory basis for making interim orders in aid of foreign arbitrations (which judgment is referred to in footnote 2 to [16] of Justice Kawaley's judgment on the papers in *Al-Haidar v Rao*, unreported, 3 February 2023). I must therefore interpret Section 54 as best I can by reference to the statutory language and context and such materials as are properly available relating to the intention of Parliament in enacting the section.

88. It seems to me that as a matter of jurisdiction Section 54 gives the Court the power, when an application for interim remedies is made in relation to a foreign arbitration, to grant the same forms of interim relief that are available to it when dealing with ordinary (non-arbitration related) proceedings before it. Section 54 refers to interim remedies "*in relation to arbitration proceedings*." Therefore there must be a sufficient connection between the interim remedies sought and the foreign arbitration. As a matter of discretion, when deciding whether to grant interim remedies and what kind of interim remedy to grant, the Court is required to have regard and give particular weight to the international arbitration context. This means taking into account "*specific principles of international arbitration*." This phrase, which is not defined or elaborated on in Section 54, appears to me to require the Court to take into account, and unless there is a good reason for not doing so respect and give effect to, the settled practice and regulations of the international arbitration bodies, states and arbitrators regarding the conduct of international arbitrations (and the role of courts) where that practice has developed into (reasonably) precise and particular ("*specific*") rules which are properly established by the parties on an application under Section 54. It is clear that Section 54 gives the Court a broad discretion and it would be wrong to try to confine it by formulating a too-rigid test for its application. So my reference to

"*rules*" is not intended to limit the wider term "*principles*." The parties in each case need to say what principle they rely on and adduce evidence supporting the existence of the principle in a sufficiently precise and clear form such that it can be taken to be generally applicable and intended and able to guide the conduct of parties to the arbitration. And the Court needs to decide in each case whether the principle relied on is properly established and applicable.

89. It seems to me that Section 54 also entitles the Court to have regard, at a high level, to its own decisions and approach to exercising a supervisory jurisdiction in relation to arbitrations. Section 54(2) refers to the Court's "*own procedures*." This could be taken to be a reference to the Court's procedural rules but it seems to me arguably to go further and to permit the Court to take account of the approach reflected in the Arbitration Act 2012 and the case law regarding court intervention in and supervision of arbitrations. Of course, the provisions of the Arbitration Act regulating the power of the Court to supervise and grant orders in relation to domestic arbitrations do not apply in the case of arbitrations with their seat outside the Cayman Islands. But the need to limit Court intervention and not to interfere with the arbitration process save where there is a clear basis for doing so is a principle underlying the Arbitration Act 2012 and this Court's approach to granting relief to parties engaged in an arbitration and one which the Court can take into account on applications under Section 54 (to the extent not conflicting with proven specific principles of international arbitration).

90. It appears highly likely, as the Plaintiffs have pointed out in their helpful Supplemental Submissions, that Section 54 was based on Article 17 J of the Model Law. The Arbitration Act 2012 as a whole followed the structure and content of the Model Law. I note that the Attorney-General, when introducing the Arbitration Bill 2012 for its second reading in Parliament noted that "*This modernised law .... is patterned on the United Nations Commission on International Trade [Model] Law*" (see the Official Hansard Report for 5 April 2012 at page 857) although the 2012 Act was not based exclusively on the Model Law. As the Law Reform Commission noted in the executive summary of the Final Report (at page 6) that the Bill "*adopts for the most part the structure and formulation of the Model Law as its framework. The .. Bill is also informed by the legislative provisions of other jurisdictions in which the conduct of arbitral proceedings is prominent*."

91. I also note that the wording in Section 54(1) is similar to that used in section 43(1)(a) of the Arbitration Act 2012 in relation to orders that the Court may make in support of domestic arbitration proceedings (which provides that the Court "*may make such orders in respect of any*

of the matters set out in sections 38 and 40 as it would in relation to an action or matter in the court").

92. Section 54(1) refers to the Court having "*the same power of issuing an interim measure in relation to arbitration proceedings, irrespective of whether their seat of arbitration is in the Islands, as it has in relation to the proceedings in court.*" It is arguable that this means that the Court is given the same powers to grant interim relief in aid of foreign arbitrations as it has in relation to foreign proceedings (that is proceedings commenced in a court outside of the Islands), so that Section 54 has to be read with and takes effect subject to Section 11A (so that the conditions applicable to the granting of, and the matters to be taken into account when granting, interim relief set out in Section 11A also apply to applications for interim measures under Section 54 with the references to proceedings being treated as references to arbitrations *mutatis mutandis*). However, I do not favour that construction.

93. But Section 11A was not enacted when Section 54 was introduced. Section 54 was included in the Arbitration Act when first enacted in 2012. Section 11A was not enacted at that time. Section 11A was introduced into the Grand Court Act in 2014 by way of Grand Court (Amendment) Law, 2014 (Law 15 of 2014). Accordingly, Section 54 cannot and should not be read as cross-referring to Section 11A and the legislation.

94. Of course, section 11(1) of the Grand Court Act was in force and (*inter alia*) codified the Court's equitable power and created the statutory jurisdiction to grant injunctive relief. However, prior to the enactment of Section 11A there were doubts as to the ability of the Court to grant interim relief in relation to foreign proceedings where there was no cause of action relied on which was capable of being litigated in this jurisdiction. It seems to me that Section 54 should be understood as confirming the Court's independent power to grant interim remedies and relief in support of foreign arbitrations, without the need (at least directly) to satisfy and have regard to the separate statutory code dealing with the granting of interim relief in relation to foreign court proceedings. Having said that, most if not all of the conditions applicable to the granting of interim relief, and the matters to be taken into account when interim relief is being granted, in aid of foreign proceedings overlap with and are connected with the matters to be taken into account under Section 54 and the basis on which relief is available is now similar (namely the likelihood of an order of a foreign court or an award in a foreign arbitration being made which will be enforceable in this jurisdiction). Section 54, in substance, imposes the additional requirement to respect and give effect to the rules regarding and limiting court intervention in international arbitrations.

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95. I say that Section 54 is to be regarded as confirming the Court's jurisdiction to grant interim relief in respect of foreign arbitrations because, of course, the extent to which the Court had such a jurisdiction, and the scope of any jurisdiction, was in doubt before the enactment of the section. It seems to me be highly likely that Section 54 was introduced, as part of the wide-ranging modernisation of Cayman arbitration law by reference in particular to the Model Law, to remove any doubts regarding the scope of the Court's jurisdiction, and to confirm a broad-based power, to grant interim relief in support of foreign arbitrations.

96. The limitations on the Court's jurisdiction to grant interim relief in support of foreign arbitrations was highlighted by the House of Lords decision in *Channel Tunnel Group Ltd.* v. *Balfour Beatty Ltd* [1993] AC 334. The House of Lords recognised the existence of a jurisdiction to grant interim injunctive relief in aid of a foreign arbitration but only, in view of the House of Lords decision in *The Siskina* [1979] AC 210, in limited circumstances. What was required according to *Channel Tunnel* was that there was a justiciable right between the parties that would be recognised by the Court even though the determination of that right might be heard in a foreign jurisdiction or by a foreign arbitral tribunal. The House of Lords recognised the power to grant an interim injunction in aid of a foreign arbitration when it was ancillary to other relief which the Court had jurisdiction to grant (in *Channel Tunnel* that was an application for a stay of English proceedings).

97. These residual doubts in relation to the Court's non-statutory jurisdiction may well now have been removed by the decision of the majority of the Judicial Committee of the Privy Council in *Convoy Collateral v Broad Idea* [2021] UKPC 24 (in a judgment of Lord Leggatt) which set out a new rationalisation of the law of freezing and interim injunctions that suggests that, provided the Court has personal jurisdiction over a party, it has power to grant an injunction. The approach was expressly held to be applicable not only to the BVI but all other jurisdictions "*where courts have inherited the equitable powers of the former Court of Chancery.*" The majority's reasoning abandons the view, articulated by Lord Diplock in *The Siskina*, that courts exercising equitable jurisdiction lack power to make an interim injunction against a defendant against whom the claimant has no underlying cause of action (it remains to be seen as to what reception is given to the decision in this jurisdiction and how the non-statutory power to grant interim relief in support of foreign proceedings recognised by the majority should sit alongside the legislative power in Section 54).

98. It follows in my view from this construction of Section 54 that when considering an application for an interim injunction made in reliance on the statutory power the Court's approach should be as follows:

(a). does the application seek "*an interim measure in relation to [foreign] arbitration proceedings*." What is the basis of the application?

(b). does the application satisfy the *American Cyanamid* test. This is an application for an interim injunction in relation to which the Court normally applies the principles in *American Cyanamid*.

(c). where an anticipatory *quia timet* injunction is sought, have the additional requirements for such relief been satisfied (as to which see the judgment of Kawaley J in this Court in *Frontera Resources Corporation v Hope* (unreported, FSD 193 of 2018, 27 February 2019) and of Marcus Smith J of the High Court in London in *Vastint Leeds BV v Persons unknown* [2019] 4 W.L.R. 2).

Section 54 – is the relief sought by the Plaintiffs sufficiently related to or connected with the Arbitrations?

99. I have already noted that Section 54 refers to interim remedies "*in relation to arbitration proceedings*" and indicated that this seems to me to require that there must be a sufficient connection between the interim remedies sought and the foreign arbitration.

100. Minsheng argued that in order to apply under Section 54 the Plaintiffs must establish that the claim in respect of which they seek relief, namely that Minsheng will be in breach of the Charges and the Plaintiffs' rights as chargors if it takes steps to enforce the Charges at this point, is covered by the arbitration clauses in the Loan Agreements and has therefore properly been referred to the PRC Arbitration. Minsheng, as I have noted, submits that it is not and therefore that the Plaintiffs are not entitled to relief under Section 54.

101. It seems to me that the correct approach is first for the Court, without deciding the issue, since it is an issue for and before the arbitrators in the PRC Arbitration, to consider whether the Plaintiffs have shown that it is reasonably arguable (or that there is a serious issue to be tried) that the dispute as to whether Minsheng is entitled to enforce the Charges is an issue within the scope of the arbitration clauses in the Loan Agreements and therefore properly referred to the PRC

Arbitration. If the Court is so satisfied, it must consider whether the interim relief is needed and properly sought to protect the right asserted and remedy sought in the PRC arbitration.

102. But in my view Section 54 permits interim relief to be granted even if the right in respect of which the relief is sought is not itself in issue and sought to be enforced in the foreign arbitration where that right arises out of and is closely connected with the claim made in the arbitration and interim relief is needed in order to allow the enjoyment and to protect the value of the right claimed in the arbitration. Section 54, as I have noted, uses wide language. The interim remedies have to relate to (to be sought "*in relation to*") the arbitration proceedings and it seems to me that relief is available where there is a sufficient (and close) connection between the interim remedies sought and the foreign arbitration.

103. In this case, I am satisfied that the Plaintiffs have shown that there is a serious issue to be tried as to whether the dispute concerning Minsheng's entitlement to enforce the Charges is an issue within the scope of the arbitration clauses in the Loan Agreements and therefore properly referred to the PRC Arbitration. Of course, the Loan Agreements are in the Chinese language and governed by PRC law. I have received no expert evidence as to the principles to be applied under PRC law when interpreting these arbitration clauses (although Ms Li Dongxia in her First Affirmation does refer to provisions in the PRC Civil Code relating to the interpretation of contractual terms in connection with the construction of clauses 13(4) and 14(4) of the Loan Agreements). Furthermore, the scope of these arbitration clauses is properly a matter for the CIETAC arbitral tribunal. I can and should do no more than review the basis on which the Plaintiffs claim that their challenge to Minsheng's right to enforce the Charges is properly referred to and before the CIETAC arbitral tribunal and Minsheng's counter-arguments and decide whether the Plaintiffs' position establishes a serious issue to be tried. In my view it does. It cannot be said that the Plaintiffs have no real prospect of establishing before the CIETAC arbitral tribunal that their challenge to Minsheng's right to enforce the Charges is properly referred to the PRC Arbitration. Clause 19 of the 2018 Loan Agreement and clause 18 of the 2019 Loan Agreement are widely drafted and cover not only "*disputes arising from*" but also disputes arising "*in connection with the implementation of"* or *"related to*" the Loan Agreements. On the face of it, and assuming that the English translations are broadly accurate, this wording is reasonably capable of extending to a dispute as to the effect and consequence on the rights of a chargee whose security secures the Loans of the discharge of the Loans as a result of the deduction arrangements.

104. It is true that a question arises as to whether the arbitration clauses in the Loan Agreements can apply to a dispute between the Plaintiffs and Minsheng regarding the enforcement of the Cayman law governed Charges which contain a non-exclusive submission to the jurisdiction to which the PRC Lender and the PRC Borrower are not parties. But the Plaintiffs and Minsheng are parties to the Loan Agreements. Furthermore, the Charges only include a non-exclusive submission to the jurisdiction of the Cayman courts thereby allowing proceedings to be commenced here. They do not prohibit issues arising between the parties to the Charges being dealt with in an arbitration to which they are parties if the arbitration clause binding on them under a different agreement requires or permits that to be done.

105. Even if that is not the correct view, it seems to me that the application for the interim injunction is within Section 54 because it is needed to ensure the effectiveness and value to the Plaintiffs of an award in the PRC Arbitration. The dispute as to whether the Loans have been discharged is very closely linked to the dispute as to the enforcement of the Charges. This is because in law the Loans and the Charges are closely linked. If the Loans are discharged there are no secured liabilities and the security interest ceases to attach to the charged property. Even if the Second Tranche cannot be treated as property the rights to which are disputed and directly covered by the PRC Arbitration, it is indirectly covered in the sense that the outcome in the PRC Arbitration as to whether the Loans have been discharged will determine whether the Plaintiffs retain an equity of redemption and an interest in the Second Tranche. The interim relief seeks to preserve and protect that interest.

Is there a requirement that the Plaintiffs first apply to the arbitral tribunal? What specific principles of international arbitration fall to be taken into account?

106. While I have only been referred to a few passages in *Redfern and Hunter* it was not in dispute that the role of courts in international arbitrations is and should be limited. In my view, it is fair to say that the general approach of the courts is generally regarded, under the Model Law and in jurisdictions which have enacted legislation governing the powers of courts to supervise and intervene in arbitrations, as being to reinforce the reference to arbitration and render any award effective. In other words, the court should only award interim measures where they will support and promote arbitration proceedings.

107. Redfern and Hunter discuss, at [7.18] the relationship between the court and the arbitration once the arbitral proceedings have been instituted, as follows:

> *"What happens in the most important phase of an arbitration when the arbitrators begin their task? The baton has been passed to them. Is there any need for national courts to be*

> *involved in the arbitral process? The answer in almost every case is 'no', and the recent changes to major arbitration rules which provide for Emergency Arbitrators or the expedited formation of arbitral tribunals have made that 'no' more emphatic. Once an arbitral tribunal has been constituted, most arbitrations are conducted without any need to refer to a national court, even if one of the parties fails or refuses to take part in the proceedings. There may be times, however, when the involvement of a national court is necessary in order to ensure the proper conduct of the arbitration. It may become necessary, for instance, to ask the competent court to assist in taking evidence or to make an order for the preservation of property that is the subject of the dispute or to enforce tribunal-ordered interim measures. The question that then arises is whether a national court may (or indeed should) become involved in a dispute that is subject to arbitration, and if so, how far this involvement should extend."*

108. As regards the exercise of the Court's power to grant interim remedies on the application of a party to a foreign arbitration who has not first applied to the arbitral tribunal for interim remedies or sought the permission of the arbitral tribunal to do so, it is noteworthy that Section 54 does not impose any particular pre-conditions on the jurisdiction or a party's right to apply to the Court. The restrictions and conditions on the exercise of the Court's powers exercisable to support of domestic arbitrations are not applied in relation to foreign arbitrations.

109. Redfern and Hunter note, at [7.34] in the passage quoted by the Plaintiffs, that where the national law of the court before whom an application for interim remedies is sought does not deal with the issue of whether interim relief should first be sought from the arbitral tribunal the proper approach is likely to depend on the circumstances of the case. The learned authors say that where the arbitral tribunal has not been constituted, there is a genuinely urgent need for relief and no provision for the appointment of an emergency arbitrator to grant interim remedies or a concern that any order made by such an arbitrator may not respected or enforced, an application to a court is likely to be justified. However, "*Where the arbitral tribunal is in existence or where the appointment of an emergency arbitrator is possible and likely to be effective, it would be appropriate to apply first to that tribunal or emergency arbitrator unless international enforcement may be required*."

110. The need to be cautious before granting interim remedies to a party to an arbitration flows from the policy (and I would say principle of international arbitrations) of limited curial intervention. The arbitral process must be fully respected and given priority (a policy of Arbitration First is adopted). Parties ought not to be allowed to bypass seeking interim measures from the arbitral tribunal merely because curial assistance is conceivably available. Rather, in my view, help from the Court is to be sought only when relief from the arbitral tribunal is inappropriate, ineffective or incapable of securing the particular form of relief sought.

111. In the present case, the Plaintiffs, in light of the analysis in Redfern and Hunter, relied on the fact that the CIETAC arbitral tribunal had not been formed and constituted when they issued the Originating Summons and its constitution has been delayed by the action of Minsheng in filing the Yuecheng Application. They assert that as a result it was not and is still not possible for them to obtain an interim injunction in the PRC Arbitration. They also relied on the need in this case for any interim remedies awarded by the CIETAC arbitral tribunal to be enforced in this jurisdiction.

112. As regards the first point, I would have preferred to have proper evidence of the position in relation to the PRC Arbitration. The Plaintiffs have asserted by way of counsel's submissions that there is currently no basis on which interim remedies including an interim injunction can be granted following the filing of the PRC Request for Arbitration. I do not believe that this was confirmed in the Plaintiffs' evidence and there has been no evidence from Ms Li Dongxia as to the applicable CIETAC rules or as to the powers of the Beijing court. I have carefully considered whether I should decline to grant the Plaintiffs' application and refuse to grant an interim injunction on this basis alone. I have concluded that on this occasion this would not be appropriate in circumstances where Minsheng did not challenge the Plaintiffs' assertion or adduce contrary evidence. The application was made on the basis or assumption that prior to the constitution of the CIETAC arbitral tribunal the Plaintiffs were unable to apply for and obtain interim remedies in the PRC merely as a result of the filing of the PRC Request for Arbitration. However, it does seem to me that the Plaintiffs should be required, as a condition of the granting of injunctive relief, to file a further affirmation confirming at least their position that there is no power or jurisdiction under the CIETAC rules that would permit a suitably qualified person or body (such as an emergency arbitrator) to grant an interim injunction of the type they seek from this Court.

113. On the basis that an interim injunction could not have been obtained in accordance with the CIETAC rules at the time that the Originating Summons was issued and provided that the Plaintiffs can establish that there is an urgent need for injunctive relief and that a failure to grant such relief will cause them irreparable harm, I am satisfied that the absence of a prior application within or related to the PRC Arbitration does not prevent this Court granting the injunction sought by the Plaintiffs.

114. As regards the second point, it does appear from the discussion in Redfern and Hunter that the need for international enforcement is accepted, as a matter of settled practice in international arbitrations, as a justification for applying first to an appropriate foreign court. The foreign court will be appropriate if it sits in the jurisdiction in which assets in dispute are located so that its

orders can readily and easily be enforced against or in relation to those assets without the need to establish a proper basis for enforcing an interim remedy granted in the foreign arbitration. Once again, I would have preferred to see a more detailed explanation of the concerns regarding the enforceability abroad of interim remedies granted within the PRC arbitration and how *in this case* there were doubts as to the enforceability of such an award or order in this jurisdiction (I am myself aware of some of the issues regarding the characterisation of interim arbitral remedies as orders or awards and the debate as to whether orders are enforceable abroad). However, I accept that since the Plaintiffs also argued that no interim remedies were available in the PRC Arbitration, there is little point in providing a detailed explanation as to why in principle certain interim remedies granted within the PRC arbitration might not be enforced in this jurisdiction.

115. It also seems to me that the existence of the submission to the jurisdiction of the Cayman Court in the Charges and the dispute as to whether the PRC arbitration clause in the Loan Agreements covers the Plaintiffs' challenge to Minsheng's right to enforce the Charges is a factor to be taken into account in deciding whether it is appropriate to grant injunctive relief before an application has been made to or permission to apply to this Court has been sought from the CIETAC arbitral tribunal. It appears in this case that there would have been a risk, even if there was an arbitral body with the power to grant an interim injunction, of a delay while the issue of the CIETAC arbitral tribunal's (or another body's such an emergency arbitrator's) jurisdiction to adjudicate on issues relating to the enforcement of the Cayman law governed Charges was briefed and resolved. This jurisdictional complication, arising from the difference between the dispute resolution provisions in the Loan Agreements and the Charges, does weigh in favour of allowing an urgent application to this Court to restrain the exercise by Minsheng of its rights under the Charges.

116. The Plaintiffs originally asserted that the injunctive relief they seek was in aid of both the PRC Arbitration and the Hong Kong Arbitration. But as I understand their case, they ended up relying exclusively or primarily on the PRC Arbitration. This is the Arbitration within which the enforcement of the Charges and the discharge of the Loans are raised, and to that extent I accept that the PRC Arbitration is the one most closely connected with the Charges. Having said that, the Plaintiffs need to succeed in the Hong Kong Arbitration in order to be able to succeed in the PRC Arbitration and so they are also closely linked. It is also the case that the Hong Kong Arbitration is underway and it appears from the rules referred to by Mr Lowe in his submissions that interim remedies can be granted by the Hong Kong arbitral tribunal. I have considered whether the Plaintiffs' failure to apply to the Hong Kong arbitral tribunal should disentitle them from being granted, or be a significant factor weighing against the granting of, the injunction. I

have concluded that while it is a factor to be taken into account the Plaintiffs had a reasonable justification in this case for not applying to the Hong Kong arbitral tribunal. The risk of at least delays in establishing that the Hong Kong Arbitration covered the dispute over Minsheng's right to enforce the Charges and the risk that it does not, means in a case of real urgency an application to this Court for injunctive relief was reasonable and justified (in accordance with applicable principles of international arbitration).

117. But in my view it does not follow from the conclusion that an urgent application to this Court was reasonable and justified in the circumstances that the Court should grant an injunction that continues irrespective of the view of the CIETAC arbitral tribunal once constituted or without further reference at least to that tribunal. It seems to me that the principle of limited curial intervention and of the Court acting in aid of and with respect for the primary adjudicative role of the arbitral tribunal requires that in an exceptional case like this, where it has not been possible to apply to the CIETAC arbitral tribunal for an interim remedy or for permission to apply for interim injunctive relief from this Court, the Plaintiffs should be required to undertake (as a condition to the grant of the injunction) that they will promptly (and within a time period to be agreed between the parties or as ordered by me following receipt of submissions as to what is a reasonable time for making the application) apply to the CIETAC arbitral tribunal for permission to continue to rely on the relief so granted (if such an application can be made within the PRC Arbitration) and that the injunction should contain a statement that it will cease to have effect (and the Plaintiffs must apply for it to be discharged) if such permission is not obtained. This approach balances the need to ensure that the Plaintiffs are properly protected against the grave harm that, as I explain below, they are likely to suffer if the injunction is not granted now against the need to ensure and respect the primacy of the PRC Arbitration. Such a term or provision to be included in the injunction is of course broadly analogous in effect to section 43(2) of the Arbitration Act 2012 ("*An order of the court under this section shall cease to have effect in whole or in part if the arbitral tribunal or any such arbitral tribunal or person having power to act in relation to the subject matter of the order makes an order to which the order of the court relates*").

Have the Plaintiffs shown a serious issue to be tried?

118. I accept the Plaintiffs' submission on this point.

119. As I have already noted, when an application for interim relief is sought in aid of a foreign arbitration, the Court's role in reviewing the merits of the claims subject to arbitration is limited, particularly as in this case where the claims are governed by a foreign law and no expert evidence

on the foreign law has been adduced. As in a case involving a domestic arbitration, the Court should not investigate the underlying claims where to do so might involve trespassing on the function of the arbitral tribunal. The Court will need to be satisfied that there is a valid arbitration agreement between the parties applicable to the dispute. There is no challenge to the validity of the arbitration clauses in this case and I have already held that I am satisfied that the Plaintiffs have shown that there is a serious issue to be tried as to whether the dispute concerning Minsheng's entitlement to enforce the Charges is an issue within the scope of the arbitration clauses in the Loan Agreements. I have also, in order to form a provisional view for the purpose of satisfying myself that the *American Cyanimid* test is met in relation to the application before me but without forming or expressing a firm or final view on the merits and therefore without trespassing on the function of the CIETAC arbitral tribunal, reviewed the PRC Request for Arbitration, the Loan Agreements, the SPA and the parties submissions and am satisfied that the Plaintiffs have established that there is a serious issue to be tried as to whether the Loans have been discharged and therefore whether Minsheng is no longer entitled to rely on and enforce the Charges.

Have the Plaintiffs shown that damages would not be an adequate remedy and that if an injunction is not granted now they will suffer irreparable harm?

120. I also accept the Plaintiffs' submissions on this issue.

121. The Plaintiffs have shown that there is a real risk that if Minsheng is permitted to enforce the Charges at this stage and sell the Second Trance, they may suffer harm that is difficult at this stage to quantify and that may be irrecoverable. In my view, it would be wrong in the circumstances to confine the Plaintiffs to their remedy in damages.

122. It seems to me that the Plaintiffs have shown that it is at least reasonably arguable that their right to specific performance of the Put Option might be affected or destroyed if Minsheng is permitted to enforce the Charges and sell the Second Tranche. It is difficult to assess the impact of an improper exercise of Minsheng's power of sale under the Charges as a matter of Hong Kong law and the Plaintiffs' analysis has been limited. But it has said enough in my view to show that its inability to deliver the Second Trance (if Minsheng had sold the Second Tranche to a *bona fide* third party for value) could prevent it being awarded the Plaintiffs' Purchase Price and require the Put Option to be unwound (thereby putting at risk its ability to base its claim on what appears to be a valuable and advantageous term in the Put Option for calculating the purchase price payable by Minsheng). I accept that if this were to happen, the Plaintiffs would have a damages claim against Minsheng for the loss (or equitable compensation in respect of the loss) suffered as

a result of Minsheng's breach of the Charges and its duties as chargee and probably for their loss suffered as a result of being unable to complete the Put Option as a result of Minsheng's unlawful action. But at this stage it is wholly unclear whether the Plaintiffs would be entitled to recover full or adequate compensation. I also accept that the evidence shows that there are serious and real doubts as to Minsheng's financial position and its ability to meet a damages claim against it (and I accept the Plaintiffs' submission as to this and as to the effect of the Parent Letter). Refusing to grant the injunction, which will preserve the status quo and avoid these serious risks and uncertainties, will result in a real risk that the Plaintiffs will not be entitled to or be unable to recover adequate damages.

123. Furthermore, I accept the Plaintiffs' submission that an injunction is needed to protect and preserve their rights to the Second Tranche. It is true that the Plaintiffs seek relief that will result in completion of the sale of the Second Trance and their primary claim is a monetary one for the balance of the price owing by Minsheng under the Put Option. But if the Plaintiffs are successful in the Arbitrations and the purchase price, as they claim far exceeds the amount of the Loans, the Loans will be discharged and the Charges will fall away. If Minsheng fails to pay the balance of the purchase price, the issue will arise as to whether the Plaintiffs will be able, as they claim, to treat the failure to pay as a repudiatory breach of the Put Option entitling them to accept the breach, terminate their obligation to transfer the Second Tranche and claim damages. In that event they will become the absolute owners of the Second Tranche. As I indicated during the hearing, it is not clear to me that the Plaintiffs will be able to terminate their obligation to transfer the Second Tranche and claim for the balance of the price or damages (and of course I have no evidence of Hong Kong law on the point) but I accept that it is arguable that they could do so and that allowing Minsheng to enforce the Charges and sell the Second Tranche may interfere with and seriously prejudice the Plaintiffs' rights (and its equity of redemption) in the Second Tranche.

Are the Plaintiffs entitled to an injunction to restrain Minsheng from exercising its enforcement rights and powers under the Charges?

124. Once again, I accept the Plaintiffs' submissions on this point.

125. In my view the authorities relied on by Minsheng do not assist it in this case. They do not stand as authority for the proposition that a chargor who asserts that the secured debt has been consensually discharged by reason of a contractual set-off or term agreed to by the chargee that stipulates that the secured debt will be discharged by being applied against another liability (of the chargee or another person) is unable to obtain an injunction against a chargee who is nonetheless threatening to enforce its charge. The authorities establish that a chargor who relies

on an unliquidated or liquidated cross-claim against the chargee (which does not result in an equitable set-off) and probably on an equitable set-off (although that issue remains to be finally settled) is unable *unilaterally* to apply its claim against the chargee so as to discharge the secured debt. This qualification and the rationale for it was made clear by Mr Justice Megarry in *Samuel Keller* in the passage quoted above. The principle established in these cases does not apply where the discharge of the secured debt results from a *bilateral* agreement between the chargor and chargee to the effect that the secured debt may be discharged by being set-off or applied against another liability owed to the chargor (or some other designated person). It seems to me that the Plaintiffs have shown that the provisions on which they rely in the Loan Agreements are capable of constituting a bilateral agreement to such a set-off or application so that they are not seeking unilaterally to apply the sums claimed to be owed following the exercise of the Put-Option against the Loans.

126. It follows in my view that the Court cannot and should not make it a condition of the grant of the injunction that the Plaintiffs pay into Court the amount of the Loans (plus interest). As is pointed out in *Fisher & Lightwood's Law of Mortgage* (14th ed.2014) at [30.37], the requirement for a payment into Court as a condition of the grant of an injunction to restrain a sale by a chargee is merely an aspect of the general rule that the chargor must offer to redeem before he can bring the chargee before the Court. But the chargor need not offer to redeem where there is no power to sell or the chargee is not acting in good faith, which would in my view cover the case where it has been held by an arbitral tribunal that the secured debt has already been discharged.

127. As I mentioned during the hearing, there are a large number of other authorities and texts discussing this issue which were not cited. They raise a number of issues as to whether an equitable set-off is sufficient to support the chargor's application for an injunction and the extent to which there is a different rule and approach in relation to a chargee's claim to possession and to exercise a power of sale. See for example that Lightman & Moss (6th ed., 2017) at [22-009] (which states that *a cross-claim qualifying as a set-off (but no other cross-claim) is a defence not merely to the claim but also to a claim to invoke rights or remedies available upon non-payment"*; *Megarry & Wade* (9th ed.) at [24-028]; Gloster LJ in *Day v Tiuta International* [2014] EWCA Civ 1246 at [60]-[63]; and L:egatt LJ in *Woodeson v Credit Suisse* [2018] EWCA Civ 1103 at [51]-66]. However, and happily, none of these decisions or texts need to be considered for the purpose of this application.

Have the Plaintiffs established as grounds for quia timet relief?

128. I once again accept the Plaintiffs' submissions on this issue.

129. It seems to me to be clear that there is a real risk that Minsheng will take steps to enforce the Charges if an injunction is not granted. The evidence shows that Minsheng wishes to retain the right to do so and considers that it will benefit by doing so. Minsheng has refused to extend its undertaking even by undertaking not to enforce the Charges without giving the Plaintiffs a reasonable period of notice.

130. For the reasons given by the Plaintiffs and for those explained above, I consider that the Plaintiffs have established that they will suffer irreparable harm if required to wait before being granted an injunction until Minsheng has taken steps to enforce the Charges and committed a breach of its obligations under the Charges and in equity.

The exercise of the Court's discretion

131. In these circumstances, it seems to me to be appropriate that the Plaintiffs be granted an injunction restraining Minsheng from taking any steps to enforce the Charges including by exercising a power of sale until the conclusion of the PRC Arbitration or in the event that the CIETAC arbitral tribunal refuses the Plaintiffs permission to continue the injunction (provided that the Plaintiffs file further evidence confirming that their claim that interim remedies were not available following the filing of the PRC Request for Arbitration in, or in relation to, the PRC Arbitration).

132. It seems to me that the Court is required, having regard to the specific principles of international arbitration relied on and established in the case before it, to consider the balance of convenience, to balance the risk of prejudice to the parties and to consider whether the relief is consistent and in accord with those principles.

133. I am satisfied that the risk of grave and irreparable harm to the Plaintiffs from refusing to grant the injunction outweighs the risk of prejudice to Minsheng in granting the injunction. I agree with the Plaintiffs that Minsheng has not established that it will suffer material or substantial prejudice if the injunction is granted although I do give weight to and take into account the prejudice suffered by Minsheng as chargee in being prevented from exercising its enforcement rights and remedies in that capacity. In my view, there need to be substantial grounds justifying the interference with a chargee's remedies but in this case there are. The injunction will not prejudice or affect Minsheng's proprietary rights as chargee which will be preserved and remain unaffected.

It may suffer some prejudice by being unable to sell the Second Trance to a third party now (with or without the First Tranche) but the extent of such prejudice has not been established by the evidence and in any event is outweighed by the need to protect the Plaintiffs' rights under the Loan Agreements (and the SPA), by which Minsheng has agreed to be bound.

134. Furthermore, the form of injunction I propose to make ensures that the applicable principles of international arbitration, and that the primacy of the relevant arbitration, are respected with there being only a minimal effect on the PRC Arbitration (and without this Court making any findings or taking any decisions which are for the CIETAC arbitral tribunal).

The Hon Mr Justice Segal
Judge of the Grand Court, Cayman Islands
3 August 2023

Appendix

Section 11A(1)

Section 11A(1) provides that:

> *(1) The Court may by order appoint a receiver or grant other interim relief in relation to proceedings which —*
>
> *(a) have been or are to be commenced in a court outside of the Islands; and*
>
> *(b) are capable of giving rise to a judgment which may be enforced in the Islands under any Law or at common law.*
>
> *(2) The Court may, pursuant to this section, grant interim relief of any kind which it has power to grant in proceedings relating to matters within its jurisdiction.*
>
> *(3) An order under subsection (1) may be made either unconditionally or on such terms and conditions as the Court thinks fit.*
>
> *4) Subsection (1) applies notwithstanding that —*
>
> *(a) the subject matter of those proceedings would not, apart from this section, give rise to a cause of action over which the Court would have jurisdiction; or*
>
> *(b) the appointment of the receiver or the interim relief sought is not ancillary or incidental to any proceedings in the Islands.*
>
> *(5) The Court may refuse an application for the appointment of a receiver or the grant of interim relief if, in its opinion, it would be unjust or inconvenient to grant the application.*
>
> *(6) In exercising the power under subsection (1), the Court shall have regard to the fact that the power is —*
>
> *(a) ancillary to proceedings that have been or are to be commenced in a place outside the Islands; and*
>
> *(b) for the purpose of facilitating the process of a court outside the Islands that has primary jurisdiction over such proceedings.*
>
> *(7) The Court has the same power to make any incidental order or direction for the purpose of ensuring the effectiveness of an order granted under this section as if the order were granted in relation to proceedings commenced in the Islands.*
>
> *(8) The power to make Rules under section 19 includes power to make Rules for —*
>
> *(a) the making of an application for appointment of a receiver or interim relief under subsection (1); and*

(b) the service out of the jurisdiction of an application or order for the appointment of a receiver or for interim relief.

(9) Any Rules made by virtue of this section may include incidental, supplementary and consequential provisions as the Rules Committee considers necessary.

(10) In this section, "interim relief" includes an interlocutory injunction."