IN THE GRAND COURT OF THE CAYMAN ISLANDS
FINANCIAL SERVICES DIVISION

Neutral Citation Number: [2025] CIGC (FSD) 39

CAUSE NO. FSD 353 OF 2024 (RPJ)

IN THE MATTER OF THE FOREIGN ARBITRAL AWARDS ENFORCEMENT ACT (1997 REVISION)

AND IN THE MATTER OF THE ARBITRATION ACT (2012 REVISION)

AND IN THE MATTER OF ENFORCEMENT OF THE ARBITRAL AWARD OF THE HONG KONG INTERNATIONAL ARBITRATION CENTRE (CASE NO. HKIAC/A21055)

BETWEEN:

D. E. SHAW COMPOSITE INVESTMENTS ASIA 10 (CAYMAN) LIMITED

APPLICANT

AND

GRAND STATE INVESTMENTS LIMITED

RESPONDENT

Foreign Arbitral Awards Enforcement Act (1997 Revision) -Hong Kong Arbitration-issue estoppel - approach of court to reviewing Arbitral Awards-public policy

Before:	The Hon. Justice Raj Parker
Appearances:	James Eggleton of Harney Westwood & Riegels (Cayman) LLP for D. E. Shaw Composite Investments Asia 10 (Cayman) Limited Kelsey Sabine of Harney Westwood & Riegels (Cayman) LLP for D. E. Shaw Composite Investments Asia 10 (Cayman) Limited Christopher Levers of Ogier (Cayman) LLP for Grand State Investments Limited Nour Khaleq of Ogier (Cayman) LLP for Grand State Investments Limited
Heard:	4 April 2025
Draft Judgment circulated:	13 May 2025
Judgment delivered:	20 May 2025

Introduction

1. D. E. Shaw Composite Investments Asia 10 (Cayman) Limited (Asia 10) is a Cayman Islands exempted company controlled by D.E. Shaw Group, a global investment and technology development firm with offices in North America, Europe and Asia.

2. Grand State Investments Limited (Grand State) is also a Cayman Islands exempted company. It is the ultimate controlling entity for a group of entities engaged in the pre-school education sector in the People's Republic of China (the PRC).

3. Asia 10 acquired shares in Grand State in 2013 and 2014.

4. Following a dispute between the parties, in September 2020 Asia 10 notified Grand State that it wished to redeem its Series C Preference shares pursuant to section 12.3 of the Amended and Restated Shareholders Agreement dated 4 March 2013 (SHA). This Agreement together with its Articles of Association govern the relationship between Grand State and its members.

5. The dispute was about the redemption process and the negotiations between Grand State and Asia 10[1]. As a result, Asia 10 presented a Petition dated 12 January 2021 in this court to wind up Grand State and to appoint joint provisional liquidators (JPLs).

6. The Petition and the application to appoint JPLs was heard on 6 April 2021 and on 28 April 2021, the Court decided that there was a *bona fide* and substantial dispute in relation to the debt and the Petition was struck out as an abuse of process (the Cayman Judgment).

7. The Cayman Judgment also dismissed the JPL application. The Court also decided that the matters in dispute were to be resolved by arbitration in Hong Kong.

8. Grand State filed a notice of arbitration in the Hong Kong International Arbitration Centre on 15 March 2021. The arbitral tribunal was constituted on 28 May 2021 and comprised Dr Anthony Neoh QC SC JP, Ms Winne Tam SBS SC JP and Mr Rimsky Yuen GBM SC JP (the Tribunal). The Arbitration proceeded to a hearing on 20 November 2023 and a Final Award was rendered. Grand State has not complied with the Final Award dated 24 June 2024.

9. An *ex parte* order dated 6 December 2024 was obtained by Asia 10 for enforcement of the Final Award. Grand State now seeks to set aside the *ex parte* Order.

10. The Court has reviewed, with regard to affidavit evidence and exhibits, the First Affidavit of Yi Zhang affirmed on 2 December 2024, the First Affirmation of Chun Fan affirmed on 10 January 2025, the Second Affirmation of Yi Zhang affirmed on 24 January 2025, and the Second Affirmation of Chun Fan affirmed on 13 February 2025. It has also reviewed the written arguments of Counsel.

Submissions of the parties

Grand State

11. Christopher Levers appeared for Grand State and James Eggleton for Asia 10.

[1] see paragraphs 24 to 31 of Fan 1

12. In brief, Mr Levers' central argument was that as a result of the proper construction of the Final Award, the terms of Grand State's constitutional documents, the relevant provisions of the Companies Act (as revised) and prior findings by this Court[2]:

    (a) Grand State cannot lawfully redeem the Applicant's Series C Preferred Shares at this time; and
    (b) as a consequence, it is legally impossible for it to pay the redemption price immediately.

13. Mr Levers submitted that Grand State does not have legally available funds from which to make payment of the sums owed under the Final Award and accordingly Grand State is prohibited by the Articles and the SHA from redeeming the shares held by Asia 10.

14. He submitted that Article 163(d) of the Articles (and section 12.3(d) of the SHA) clearly contemplate that Grand State may not be in a position to make payment of the Series C Redemption Price if it does not possess adequate legally available funds to do so, or "*for any other reason*" and that accordingly provides it with an ability to pay the Series C Redemption Price when it has sufficient legally available funds.

15. He argued that Grand State did not have "*legally available funds*" for the purpose of Article 163(d) and argued that there was no definition provided in the Final Award, which did not dispose of this factual issue.

16. For this proposition, he relied on paragraphs 57 and 58 of Fan 1. The balance sheet for Grand State for the year ending 30 June 2024 in particular shows a cash balance of US$4,488.83 and a net annual loss of US$100,384.62.

17. Grand State's subsidiaries do not have funds available to be distributed to it. The consolidated statements of the Ledudu Group are summarised in paragraph 20 of Fan 2 and show a reduction in cash and cash equivalents from just US$88,620.97 at the end of 2020 to only US$30,334.67 at the end of 2023. With respect to those entities with whom Grand State has a purely contractual relationship (namely the PRC Entities) he submitted:

[2] See Judgment 28 April 2021

a) Grand State has no right to require any of the PRC Entities to distribute their profits to the company;

b) there are no contractual or other legal rights which would entitle Grand State to receive a distribution from the PRC Entities; and

c) further, and in any event, it would be illegal under PRC law for the PRC Entities, as private non-enterprise organisations, to distribute their profits: see also paragraphs 69 to 71 of Fan 1 and paragraph 47 of the Cayman Judgment.

18. Mr Levers argued that the only way for Grand State to increase legally available funds is for Ledudu Beijing (Technology) Development Co., Ltd. to make profits and remit profits upwards, which is not presently possible.

19. Grand State is hopeful that PRC policy will change in due course [3] but is, in the meantime, investigating other income generating opportunities outside of the PRC.

20. As to the basis for the application, recognising the pro enforcement policy of the New York Convention, Mr Levers nevertheless asked the Court to set aside the *ex parte* Order on the basis that compliance with it would be a breach of Cayman Islands law and public policy pursuant to section 7(3) of the Foreign Arbitral Awards Enforcement Act (1997 Revision) (FAAEA*)*.

21. Mr Levers relied on a number of statutory provisions in this regard:

a) Section 37(1) of the Companies Act states that:

"(1) Subject to this section, a company limited by shares or limited by guarantee and having a share capital may, if authorised to do so by its articles of association, issue shares which are to be redeemed or are liable to be redeemed at the option of the company or the shareholder and, for the avoidance of doubt, it shall be lawful for the rights attaching to any shares to be varied, subject to the provisions of the company's articles of association, so as to provide that such shares are to be or are liable to be so redeemed."

[3] Paragraph 78 of Fan 1

b) Section 37(3)(c) of the Companies Act provides that "*redemption or purchase of shares may be effected in such manner and upon such terms as may be authorised by or pursuant to the company's articles of association.*"

c) Section 37(3)(da)(ii) of the Companies Act provides a company's directors with the power to determine the manner or any terms of, any such redemption, but only so far as any such redemption is "*not… inconsistent with such articles of association."*

d) Section 37(6) of the Companies Act provides that:

> "*(a) A payment out of capital by a company for the redemption or purchase of its own shares is not lawful unless immediately following the date on which the payment out of capital is proposed to be made the company shall be able to pay its debts as they fall due in the ordinary course of business.*
>
> *(b) The company and any director or manager thereof who knowingly and wilfully authorises or permits any payment out of capital to effect any redemption or purchase of any share in contravention of paragraph (a) commits an offence and is liable on summary conviction to a fine of fifteen thousand dollars and to imprisonment for five years."*

22. He also relied on the decisions of the Judicial Board of the Privy Council in *Culross Global v Strategic Turnaround* [2010 (2) CILR 364] and *Pearson v Primeo* [2017] UKPC 19 to support the proposition that on the question of redemptions, a company's articles must be strictly followed in order to protect the shareholders whose shares are not to be redeemed.

23. In *Strategic Turnaround*, the JCPC said at [8]:

> "*It is a basic principle of company law that capital subscribed to a company may not be returned to shareholders otherwise than as prescribed by statute. Section 37(1) of the Companies Law permits the issue by a company of shares liable to be redeemed at the option of the company or shareholder, and section 37(3)(c) goes on to provide that "redemption of shares may be effected in such manner as may be authorised by or*

pursuant to the company's articles of association". It is uncontroversial that this means that the manner in which any redemption may be effected must be authorised by or pursuant to the articles of association".

24. The JCPC went on to confirm that the rationale for the above rule is "*to protect the shareholders whose shares are not to be redeemed, the terms and manner of the redemption must be set out in the company's articles".*

25. Mr Levers argued that these statutory provisions and authorities reflect the public policy of the Cayman Islands in several fundamental respects:

i) to ensure the sanctity of the contractual arrangements which parties have entered into, even where those arrangements may in fact lead to arguably "unfair" consequences, in order to protect and properly reflect the legal rights of the parties[4];

ii) to protect the interests of creditors and non-redeeming shareholders from the prejudice that would arise if other shareholders were permitted to redeem their shares other than in accordance with the requirements of the company's articles[5]; and

iii) the protection of capital of the company.[6]

26. Mr Levers stressed that in making these submissions he was not seeking to go behind the facts or law as found by the Tribunal in the Final Award.

[4] See *Culross v Strategic Turnaround* (ibid) at [16]
Pearson v Primeo (ibid) at [16] and *Pearson v Primeo* [2020] UKPC 3 at [44] to [58]
[5] *RMF Market Neutral Strategies (Master) Ltd v DD Growth Premium 2X Fund (in official liquidation)* (Unreported, Smellie CJ, 17 November 2014 at [61]-[62])
[6] *Section 37(6) of the Companies Act.*

Asia 10

27. Mr Eggleton submitted that the grounds for refusal to enforce should be construed narrowly.[7] The pro-enforcement policy of the New York Convention (as reflected in the FAAEA) is well recognised and well understood.[8]

28. The FAAEA gives domestic effect to the United Nations Convention on the Recognition and Enforcement of Foreign Arbitral Awards 1958 (the New York Convention), which provides a mechanism for the enforcement in the Cayman Islands of any arbitral award made by a tribunal in a jurisdiction that is a contracting party to the New York Convention awards (a Convention Award). The New York Convention extends to Hong Kong.[9]

29. Mr Eggleton emphasised that pursuant to Section 7 of the FAAEA, there are only limited grounds upon which a Convention Award may be refused. There has been no appeal or challenge to the Final Award.

30. Consistent with this pro-enforcement policy, the Courts have cautioned against attempts to subject arbitral awards to minute textual analyses to pick holes, inconsistencies or faults and upset or frustrate the arbitration. He submitted that the correct approach is, instead, to read awards in a reasonable and commercial way.[10] The Court should apply a presumption in favour of the award.

31. Also consistent with the pro-enforcement policy, Mr Eggleton reminded the Court of the principle that it is not for the enforcing court to embark on a process of reviewing the substance or the underlying merits of the Final Award. Even if (which Grand State does not allege) the Tribunal had made an erroneous decision of fact or law, it would not be for this Court to substitute its decision on the merits in place of the decision of the Tribunal.[11]

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[7] *Gol Linhas Aereas SA v MatlinPatterson Global Opportunities Partners (Cayman) II LP and Others* (Privy Council Appeal No. 86 of 2020) [2022] UKPC 21 at [23] See also: *White Crystals Ltd Plaintiff v IGCF General Partner* (Unreported, 2 April 2024, Ramsay-Hale CJ) at [36]-[37]
[8] *LAM Global* at [8], citing *Essar Global Fund Ltd v Arcelor Mittal USA LLC* CICA (Civil) Appeal
[9] Arbitration Ordinance No. 17 of 2010, Section 4
[10] *Zermalt Holdings SA v Nu Life Upholstery Repairs* [1985] 2 E.G.L.R. 1, page 14 at [F] See further: *Primera Maritime (Hellas) Ltd and Others v Jiangsu Eastern Heavy Industry Company Ltd and Another* [2013] EWHC 3066 (Comm) at [30],*Bulk Ship Union SA v Clipper Bulk Shipping Ltd* [2012] EWHC 2595 (Comm) at [22]-[23]
[11] See *Guide to the Interpretation of the 1958 New York Convention (Second Edition) 2024 (the ICCA Guide),* p75*;Gol Linhas v Matlin Patterson* [2022] UKPC 21 at [37] (albeit within the context there of foreign judgments rather than foreign arbitral awards*,Dicey, Morris & Collins on the Conflict of Laws 16th)Ed.* at [16-100]

32. Further, he argued that there was an issue estoppel against Grand State as a result of the Final Award and he referred the Court to a number of authorities in this regard[12]. He submitted that the doctrine is rooted in the public policy interest of finality in legal proceedings and is designed to prevent abuse of process.[13] It applies to arbitration as well as litigation.[14]

Decision

Jurisdiction

33. There was no dispute as to the Court's jurisdiction. The effect of Section 74(2) of the Arbitration Act 2012 is that, insofar as the enforcement of awards pursuant to the FAAEA is concerned, the reference at Section 5 of the FAAEA to the Arbitration Act 1996 continues to have full force and effect.[15]

34. Section 7 of the FAAEA provides that enforcement of a convention award shall not be refused[16] except in the cases mentioned in subsections (2) and (3). Subsection (3) is the only relevant provision in play in this application, namely where enforcement would be contrary to public policy. It is the only ground relied upon by Grand State.

The Final Award/conflict with the Cayman Judgment

35. As a result of Mr Levers' arguments, the Court has scrutinised the Final Award in detail. The Court does not find that the Final Award is ambiguous or unclear. Relevantly, it fully dealt with the rights and obligations of the parties arising from the interpretation of article 12.3 of the SHA which is governed by Hong Kong law.[17].

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[12] *Gol Linhas Aereas SA v MatlinPatterson Global Opportunities Partners (Cayman) II LP and others* (Privy Council Appeal No. 86 of 2020) [2022] UKPC 21 at [34]-[38] See also, *Hulley Enterprises Limited and others v The Russian Federation* [2025] EWCA Civ 108 at [29]-[42]
[13] *Nasser Sulaiman H M Al-Haidar v Jetty Venkata Uma Mahesgwara Rao* (Unreported, FSD 328 of 2022 (IKJ), 15 [no reference given] (April 2024) at [22]. See also *Gol Linhas* at [34]-[38]
[14] *Associated Electric & Gas Insurance Services Ltd v European Reinsurance Co of Zurich* (Privy Council Appeal No. 93 of 2001) [2003] WL 116937 at [14]-[15] citing *Fidelitas Shipping Co Ltd v V/O Exportcheleb* [1966] 1 QB 630, 643, per Lord Diplock.
[15] *LAM Global* at [7]
[16] *In re Swiss Oil Corp* [1988-89] CILR 277 at page 282. See also *Terk Technologies* [2000] CILR 196 at page 203*;* and *Globeop* [2014] (1) CILR 412 at [8] and [23].
[17] V.5 P.52

36. To the extent that it can be said to be in some way in conflict with an earlier decision of this Court as to the proper interpretation of the same/equivalent language contained in the (Cayman Islands law governed) Articles of Association of Grand State and the (Hong Kong law governed) SHA, that is not a reason in itself to refuse to enforce the Final Award. The Court does not agree that there is any such conflict in any event.

37. The central issues before the Cayman Court were whether there was a *bona fide* dispute on substantial grounds as to whether Grand State was obliged, under the terms of the Hong Kong law governed SHA, to pay the redemption price if it did not have legally available funds to do so; and if there was such a *bona fide* dispute, whether that dispute should be resolved by arbitration in Hong Kong. This Court answered yes to both issues. There was a *bona fide* dispute and the matter should be resolved by arbitration as agreed by the parties.

38. Having jurisdiction to determine the disputes between the parties, the Hong Kong tribunal was perfectly entitled to take the view that the earlier Cayman Judgment did not constrain it[18].

39. The Cayman Court in April 2021 was expressing a provisional view as to whether there was a *bona fide* dispute which was arguable on substantial grounds in the context of a Winding Up Petition that the redemption price may not be payable in certain circumstances. The Petition was struck out on the basis that the Court found that the issues raised in the Petition were *bona fide* disputed on substantial grounds. The Court made no final decisions on the grounds raised. It merely found that they were arguable on substantial grounds based on the material and submissions before it at the time.

40. Moreover, the Court decided that it would have stayed the disputes regarding the validity and existence of the debt claimed because they were subject to the Hong Kong arbitration agreement and they had to be resolved in arbitration in Hong Kong, not under the Winding Up procedures of the Cayman Court[19]. That has now taken place and the Final Award has been issued.

41. The Cayman Judgment records, at paragraphs [65], [73] and [77]-[79], that the Court agreed with Grand State that the dispute should be resolved by arbitration in Hong Kong:

[18] §72 of the Award
[19] § 65 Judgment April 2021

> *"65. There is no dispute as to the validity of the Arbitration Agreement. The disputes which have arisen between the parties are in my view matters which fall within the scope of the Arbitration Agreement. In these circumstances, it is appropriate that the Petition be stayed to permit the dispute resolution mechanism contractually agreed by the parties to be utilised."*
>
> *"73. I accept Mr Smith QC's submission that the starting point for the court in assessing how to exercise its discretion will be to ensure that the parties' freedom to choose a dispute resolution mechanism is respected and that any decision to arbitrate made by the parties is upheld."*
>
> *"78. Indeed, arbitration in Hong Kong is likely to have been agreed on the basis that disputes under the Shareholders Agreement, a Hong Kong law governed document, would be best resolved by arbitrators qualified in Hong Kong law and who are fluent in both English and Chinese."*
>
> *"79. Accordingly, the disputes regarding the validity and the existence of the debt claimed in the Petition, which are subject to Arbitration Agreement would in the alternative to the Petition being struck out, have been stayed."*

42. Grand State itself pressed for the dispute to be resolved by way of arbitration in Hong Kong in accordance with the arbitration agreement contained in the SHA prior to the hearing of the Petition and as recorded in the Cayman Judgment[20].

43. Having commenced the arbitration, it is now most unattractive for Grand State to seek to use the Cayman decision to resist enforcement of the Final Award. The argument is also devoid of merit because there is no material conflict between the two decisions, which were decided in their individual contexts.

44. It is also not good enough for Grand State, which has not challenged, applied to set aside, or appealed the Final Award, to now say it was not represented at the hearing on 20 November

[20] §§8,9 22-23,and 64-69

2023[21] because there were no legally available funds to afford to maintain legal representation, particularly by noting the high fees payable to the Tribunal[22]. I accept Mr Eggleton's argument that Grand State is able to engage global counsel of high quality (and no doubt commensurate expense) to represent its interests as and when it chooses to.

Issue estoppel

45. It also seems to the Court that the substance of Grand State's case to prevent enforcement of the Final Award is to now attempt to relitigate material points in the enforcement process which were properly before the Tribunal, including the arguments relating to whether or not Grand State had "legally available funds" within the meaning of the SHA and Articles and which were determined against it.

46. The dispute referred to arbitration concerned the parties' respective rights and obligations in connection with the redemption procedure initiated by Asia 10 whereby it demanded that Grand State redeem all of its Series C Preferred Shares and to pay it a redemption price of some $71m by 30 October 2020.

47. Those issues relating to the meaning and effect of various contractual provisions in the SHA were determined by the Tribunal in accordance with Hong Kong Law as per Article 14.4 of the SHA.

48. Importantly, the Tribunal considered in particular whether Grand State was able to rely on an alleged lack of legally available funds to excuse non-payment, the process whereby the SHA was negotiated, and the factual position as regards Grand State's financial position.

49. The Tribunal considered paragraphs 56 -92 of the Application for Arbitration which concerned Grand State's arguments that the company was only obligated to pay the redemption price when it had legally available funds.[23]

[21] Although it did put in written opening and closing statements-see § 23 of the Final Award
[22] § 41 Fan
[23] See § 39 .2 1 of the Final Award

50. It rejected these arguments and decided that under the terms of the SHA, Grand State must immediately redeem and pay, and that the quantum of the redemption price is to be calculated in accordance with the SHA.

51. Against this, Mr Fan now says at paragraph 46 of his evidence[24]

> "*Redemption is however not permitted by the terms of the SHA which expressly only oblige the Company to repay any valid Series C redemption from "time to time out of legally available funds"*".

52. He says at paragraph 48 that Grand State does not have legally available funds because it does not have enforceable rights against the income generating PRC Entities to procure payment of the redemption funds and that none of the PRC Entities in the group are related to Grand State by way of shareholder control and it would be illegal under PRC law for them to distribute their profits.

53. However, the Tribunal considered the provisions of Article 12.3 of the SHA in detail and took account of the Claimants arguments having set them out as follows: [25]

> *'39.2.2 First, according to Article 12.3 of the Shareholders Agreement, the Claimant's obligation to pay the redemption price is stipulated in Article 12.3(a) (The Company shall pay to each Series C Investor ...an amount ... equal to the sum of ... (ii) an amount equal to 18% internal rate of return based on Series C Issue Price from the issuance date of such share through the date when such share is redeemed...), which indicates that the Claimant may make payment after the Redemption Date; and Article 12.3(d) (If the Company fails to pay on the Series C Redemption Date the full Series C Redemption Price in respect of each Redeemed Series C Share because it has inadequate funds legally available therefore or for any other reason, ... the shortfall shall be paid and applied from time to time out of legally available funds immediately as and when such funds become legally available) explicitly provides that if the*

[24] First affirmation 10 January 2025
[25] §§ 39.2.2 -39.2.7 of the Final Award

Claimant is unable to make payment due to "inadequate funds legally available" or "other reasons," it does not indicate that it constitute a breach.

39.2.3. Second, other provisions of the Shareholders Agreement support this interpretation: Article 12.2(c) (Payment Mechanism for Series B Redemption Price) (The Company shall pay... on the Series B Redemption Date ... unless such Series B Investor consents to a delay in the payment). As linguistic errors should not be readily accepted (West Bromwich Building), this indicates that "the parties intentionally chose different wording."

39.2.4. Third, the negotiation process supports this interpretation. Under Article 47(3) of the Arbitration Ordinance, an arbitral tribunal is not bound by strict rules of evidence and under HKIAC Rule 22.2, the tribunal may determine the admissibility, relevance, and materiality of the evidence. Even if strict rules of evidence are applied, when negotiation contents help determine the "genesis and object" of a clause or can help determine the meaning of certain wording in case of ambiguities, the tribunal should consider the contract negotiation process of the parties. The negotiation process of the parties shows that they intentionally sought to avoid the Claimant's "bankruptcy" due to the inability to pay the full redemption price, that the deletion of the 12-month grace period means that there is no time limit for the Claimant to pay the redemption price, and that the redemption price would only be paid 'from time to time' when there are legally available funds . The internal rate of return was accordingly increased from 10% to 18%.

39.2.5 Fourth, the Cayman judgment supports this interpretation. The Cayman judgment dismissed the Respondent's winding-up petition (...it is plainly arguable that the Shareholders Agreement provides that the Company does not have to pay the Petition Debt unless it has adequate "legally available" funds to do so... The debt remains from the time of redemption, but it does not become payable until the Company has legally available funds. The clause, on a plain reading seems to provide a practical way for investors to redeem their shares in an orderly manner. From a commercial point of view this seems to me to make sense as it does not potentially force the Company into a position of acute cash flow difficulties).

39.2.6 There is no evidence that the Respondent has met the conditions precedent for redemption, namely Article 12.3(c) (the Series C investors are obligated to deliver share certificates or provide indemnity).

39.2.7. The Claimant asserts that it does not have adequate funds legally available and therefore, it is not obligated to pay the redemption price.

(1) According to Article 12.3(e) of the Shareholders Agreement, the Claimant is only obligated to use "all reasonable efforts" to increase legally available funds for the repayment of the redemption price, and this obligation is not continuous.

(2) Ledudu BVI, Ledudu Hong Kong and Ledudu Beijing have no distributable funds. Ledudu Beijing does not have the basis to require mainland entities to pay service fees. After the issuance of the Opinions on Preschool Education Reform, it was prohibited and impossible to obtain approval from government authorities to derive economic benefits from mainland VIEs through service agreements. After the introduction of the general benefits policies, the kindergartens operated by the Ledudu Group had virtually no economic benefits available for distribution.

(3) The Claimant has no right to demand profit distribution from the business entities within China. as it is not a shareholder of these entities……".

54. In paragraph 43, the Tribunal also sets out Grand State's responses to the reply and defence to counterclaim to further set out its case. There can be no reasonable suggestion that it did not fully consider Grand State's case.

55. It then dealt with the arguments as to the rights and obligations of the parties from its interpretation of Article 12.3 of the SHA in paragraph 60 *et seq* of the Final Award. It can be seen that it approached the arguments by way of contractual construction of the relevant clauses.

56. It reached the following conclusions[26] :

[26] §§74-77 of the Award

"74. As for the functions of Articles 12.3(d) and (e) of the Shareholders Agreement, the arbitral tribunal believes that the most reasonable interpretation is that these two clauses oblige the Claimant to make all efforts to raise and utilize all 'legally available funds' to make immediate redemption payments. If the 'legally available funds' are inadequate to cover the payment, the company should first distribute the redemption funds proportionally according to the shareholders' shareholding ratio. ***These two clauses only impose obligations on the Claimant but do not exempt the Claimant from the responsibility of making immediate redemption payment.****"*

"75. Since the Respondent's redemption right has become effective, it can require the Claimant to fulfill the redemption obligation at any time. On the other hand, if the Claimant can prove to the Respondent that the company's 'legally available funds' will become adequate to cover the full redemption price [in full] within a reasonable period, the Respondent may choose to allow a delay in the fulfilment of the redemption obligation, but the choice rests entirely with the Respondent. ***If the choice does not rest with the Respondent, then the Claimant may indefinitely postpone the redemption obligation on the grounds of 'inadequate legally available funds.'***

"76. Looking at the Shareholders Agreement from another angle, the agreement clearly grants an absolute redemption right to the Series C preferred shareholders, which has already become effective. During contract discussions, both parties were also aware that if the company did not have adequate liquid funds for redemption, it would face the risk of bankruptcy. Therefore, in the absence of a grace period, the Claimant can use facts to persuade the Respondent to agree to a grace period (i.e., temporarily not exercising the right), ***but the choice should still remain with the Respondent****."*

77. To summarise the above discussions, the arbitral tribunal reaches the following conclusions:

(i) ***According to Article 12.3 of the Shareholders Agreement, the Respondent enjoys the right to immediate redemption 30 days after issuing the redemption notice;***

(ii) ***The Claimant is obligated to immediately redeem the Respondent's shares;***

(iii) ***Articles 12.3(d) and (e) of the Shareholders Agreement should not grant the Claimant an indefinite grace period. These clauses oblige the Claimant to focus on using "legally available funds" to pay the redemption price but do not exempt the Claimant from the payment obligation;***

(iv) ***Articles 12.3(d) and (e) of the Shareholders Agreement provide the Claimant with an opportunity to use facts to persuade the Respondent to grant a grace period for the redemption payment, but the choice remains with the Respondent; otherwise, the Claimant may indefinitely postpone the redemption obligation on the grounds of inadequate "legally available funds." (emphasis added)***

57. It found at paragraph 81 of the Final Award:

"…

(i) Article 12.3 of the Shareholders Agreement clearly stipulates that after September 1, 2015, if the company had not completed its initial public offering, the Respondent, as a Series C preferred shareholder, has the right to demand partial or full redemption from the Claimant;

(ii) Thirty days after issuing the redemption notice, the Respondent's redemption rights become effective immediately;

(iii) ***From the effective date of the redemption, the Claimant is obligated to pay the redemption price to the Respondent according to the instructions issued under Article 12.3(a) of the Shareholders Agreement****;*

(iv) ***Article 12.3(d) of the Shareholders Agreement imposes an obligation on the Claimant to utilize "legally available funds" to pay the redemption price, but it does not exempt the Claimant from the obligation to pay the redemption price to the Respondent, which has already become effective 30 days after the Respondent issues the redemption notice;***

(v) ***If the Claimant claims that "legally available funds" are inadequate to pay the redemption price, the Claimant must fully and comprehensively disclose the company's overall financial situation so as to inform all parties of the gap between the "legally available funds" and the redemption price and***

when the full redemption price can be paid after the efforts specified in Article 12.3(e);

(vi) ***The Claimant has not disclosed sufficient information to enable the Respondent to consider whether to grant a reasonable grace period to the Claimant;***

(vii) ***Therefore, the Claimant has not fulfilled the obligations that would trigger Article 12.3(d) and as a result cannot rely on this clause as a defense.****" (emphasis added)*

58. As a consequence of these findings, the Court cannot accept Mr Levers' argument that since the Tribunal did not explicitly deal with whether or not Grand State in fact had legally available funds, enforcement of the Final Award cannot proceed on public policy grounds. The Tribunal found that 30 days after the redemption notice the redemption rights of Asia 10 were immediately triggered and Grand State was obligated to pay the redemption price according to the instructions issued under Article 12.3(a) of the SHA.

59. It is no excuse to say Grand State was unable to comply with a direction to provide more detailed financial information because of their lack of representation within the arbitration proceedings at some stage.[27] Grand State put in opening and closing statements and has been able to engage leading law firms at various times. The result is that it cannot now rely on the alleged fact that it did not (and still does not have) legally available funds to pay the redemption price because this very issue has been dealt with by the Tribunal.

60. The Court is of the view that it is not now open to Grand State to re-run these arguments again. The relevant matters were fully argued before and determined by the Tribunal which had competence to determine those matters. It is not now open for Grand State to have a second bite of the cherry.

[27] Fan 2 §23

Construction point

61. This point was a major feature of the case advanced orally by Mr Levers on behalf of Grand State. In considering his argument, the Court reminds itself that the approach of the Court is not one which requires a textual criticism of the Final Award itself as a barrier to enforcement.[28]

62. Having reviewed the Final Award[29], the Court accepts Mr Eggleton's submissions that the meaning and effect of the decision is clear.

63. The relief granted at paragraph 86.2 of the Final Award is in the form of an order that Asia 10 sought [30], namely that that Grand State must immediately redeem and immediately pay. That is the operative provision.

64. It declared:

> *'….in accordance with the Shareholders Agreement, the Claimant is obligated (and the Claimant is hereby ordered) to immediately redeem from the Respondent the Series C Preferred Shares held by the Respondent and to immediately pay the redemption price'.*

65. The Court does not accept Mr Levers' construction of this declaration that two separate obligations were created: a direction to redeem and then to pay the redemption price. He submitted that a direction to pay the price is not offensive to Cayman Islands public policy (and his client would have no defence to a payment obligation), but the obligation to redeem the shares (unconnected to the issue of payment) is offensive to the provisions of the Companies Act and the public policy of the Cayman Islands, which is said to underpin those provisions.

66. In the Court's view, the Final Award does not say that Grand State must first redeem and then pay, or otherwise that redemption must first take place before payment. The Court accepts the proposition advanced by Mr Eggleton that on a plain reading of the Final Award, the Tribunal decided that payment constitutes and completes redemption. Without payment, there is no

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[28] *See Eric Bradley & Jacqueline Chuang v Linda Frye-Chaikin* (Cause No: G2016-0136, 4 September 2014, Unreported) at [29] and *Dicey,Morris & Collins on the Conflict of Laws (16th Edn)* at [16-123].
[29] In particular §§ 71-81
[30] cf paragraph 15 of the Final Award

redemption and with payment, redemption is completed. They are intimately connected. Both must be immediately done. The distinction sought to be drawn between the simultaneous obligations by Grand State is artificial.

67. The result of a plain reading of the Final Award naturally reflects the terms of the Articles (Article 12.3(d) and Article 163): once payment is made the shares are redeemed.

68. In this respect, the court reminds itself of the approach of Bingham J (as he then was) *in Zermalt Holdings SA v Nu Life Upholstery Repairs* [1985] 2 E.G.L.R. 1:

> *"... as a matter of general approach the courts strive to uphold arbitration awards. They do not approach them with a meticulous legal eye endeavouring to pick holes, inconsistencies and faults in awards and with the objective of upsetting or frustrating the process of arbitration. Far from it. The approach is to read an arbitration award in a reasonable and commercial way expecting, as is usually the case, that there will be no substantial fault that can be found with it."*

69. Mr Levers argued that the Tribunal separated redemption and payment as can be seen by paragraph 77 of the Final Award. His client has no difficulty he says with the immediate payment obligation, but the obligation to immediately redeem is contrary to the Companies Act and public policy.

70. The Court reminds itself that it should read the Final Award in a reasonable and commercial way[31] and upon doing so cannot separate out those parts of the Tribunal's declaration. It needs to review the Final Award as a whole and not in a strained or artificial way.

71. As to its particular reasoning, the Tribunal made its assessment of the relationship between redemption and payment clear at paragraphs 64-66 of the Final Award.

72. After citing Article 12.3(b) of the SHA in paragraph 64 of the Final Award (which specifies certain redemption mechanics) and Section 12.3(a) of the SHA in paragraph 65 of the Final Award (which requires Grand State to pay the redemption price), the Tribunal concludes:

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[31] *Primera Maritime (Hellas) Ltd & 6 Ors v Jiangsu Eastern Heavy Industry Co Ltd & Anor* [2013] EWHC 3066 (Comm), Flaux J §30

(a) (at paragraph 65) that the provisions of Section 12.3(b) of the SHA "*are merely procedural requirements, which do not affect the substantive rights of the Respondent*" and that "*thirty days after issuing the redemption notice, the Respondent's substantive rights will take immediate effect. Article 12.3(a) specifies that on the effective date, the Claimant will immediately incur the obligation to make the payment";* and

(b) (at paragraph 66) that Grand State's "*payment obligation takes immediate effect, so the Claimant must immediately make the payments to the Respondent in accordance with the instructions in [Section] 12.3(a) [of the SHA]*."

Public Policy

73. Section 7(3) of the FAAEA **provides** that enforcement may be refused if enforcement would be contrary to public policy. It is the public policy of the Cayman Islands which needs to be considered[32].

74. As Mr Levers rightly acknowledged, this is in practice a narrow gate through which to pass. The Court adopts the test suggested by David Joseph's well-known text[33] :

> '*Nothing short of illegality, reprehensible or unconscionable conduct ought in general terms to suffice'.*

75. The Chief Justice has recently considered the public policy ground in *White Crystals*[34], holding at [35]-[37]:

> *"35. I accepted Mr. Chapman's proposition that the public policy referred to in these statutory provisions is the public policy "in maintaining the fair and orderly administration of justice" and that the classic formulation where enforcement of an award would be contrary to public policy is usually*

[32] see *IPCO (Nigeria) Limited and Nigerian National Petroleum Corporation* [2005] EWHC 726 (Comm) (IPCO (Nigeria))
[33] *David Joseph Q.C. Jurisdiction and Arbitration Agreements and their Enforcement, Chapter 16 – Enforcement of Awards and Arbitrators Orders, Section C - Enforcement of New York Convention Awards Contrary to public policy* (3rd Ed, 2025, Sweet & Maxwell) at [16.85],see also *Deutsche Schachtbau-und Tiefbohr-Gesellschaft M.B.H. Respondents v Shell International Petroleum Co. Ltd. (Trading as Shell International Trading Co.)* [1990] 1 A.C. 295
[34] [2024] CIFSd 33.

> *expressed as "contrary to the fundamental conceptions of morality and justice…"*
>
> *36. It is not controversial, however, that given the strong public policy in the enforcement of tribunal awards in the FAAEA, which provides very limited bases on which the enforcement of an award may be refused, the scope of the public policy basis for refusing to enforce an award should be construed very narrowly."*

76. I respectfully agree. Despite the able arguments of Mr Levers on behalf of Grand State, the Court has not been persuaded on the balance of probabilities that the enforcement of the Final Award would be contrary to Cayman Islands public policy.[35]

77. In this case there is a final foreign arbitral award, which has not been appealed, which has comprehensively determined the contractual rights and obligations of the parties and which has ordered one party to immediately redeem its shares and immediately pay a sum of money to another.

78. Mr Levers argued that it was unenforceable in the Cayman Islands because:

a) the act of redemption (first, on his construction) would require the paying party to take a step that is in breach of the SHA and by extension its own Articles of Association and
b) therefore, is in breach of certain statutory provisions contained in the Companies Act and
c) therefore, in breach of Cayman Islands public policy within the narrow internationalist meaning of that concept for the purposes of the FAEEA is untenable.

79. Grand State fails on this application because the Tribunal did not find that the redemption and payment procedure was in breach of the SHA and by extension the Articles of Association which are in the same terms [36]. Grand State cannot now relitigate that point.

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[35] see *Dicey, Morris & Collins, The Conflict of Laws 16th Ed.* Paragraph 16R-101
[36] Mr Levers accepted in his oral submissions that the SHA necessarily informed construction of the Articles

80. That is quite apart from the fact that the Court does not accept Mr Levers' construction of the operational part of the Final Award.

81. The Arbitration dealt with a contractual dispute as to the terms upon which Asia 10 can have its shares redeemed. The Final Award has determined the parties' contractual rights and obligations and ordered Grand State to pay Asia 10. The facts of this case and the applicable law do not amount to one of the limited public policy exceptions which would justify the court refusing enforcement.

82. Asia 10 submitted a redemption notice in September 2020 at a price of approximately $70m which after over four years is allegedly worth double that amount. Grand State should not be allowed to avoid its obligations any further on the basis of arguments that have now been determined against it. The Tribunal decided that it was unable to rely on the argument that it did not have legally available funds in order to excuse non-payment; and that it had failed to disclose its financial situation fully.

83. The enforcement of the Final Award would not in the Court's view be contrary to Cayman Islands public policy or the integrity of the Cayman Island's legal system.

84. The application to set aside fails.

85. Costs will follow the event. If the parties cannot agree on costs the court will deal with the matter on written submissions of no more than 5 pages in length filed within 14 days.

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THE HON. JUSTICE RAJ PARKER
JUDGE OF THE GRAND COURT