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Cayman Islands

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Introduction

The Cayman Islands (colloquially known as "Cayman") enviably lie in the warm waters of the north-western Caribbean. Drawn by its exceptional beaches and clement weather, the territory attracts tourists from the world over. Being only an hour's flight from Miami, it is also a natural offshore hub for many North American clients. It is a British Overseas Territory which enjoys political stability and has a well-founded reputation for a strong and impartial judiciary.

The legal system descends from the English common law, so its decisions draw wisdom from influential precedents created in the courts of many Commonwealth states. Any ultimate appeal lies to the Judicial Committee of the Privy Council of the United Kingdom.

Cayman is the world's fifth-largest financial centre and home to more than 80% of the world's hedge funds. Cayman's more than 11,000 funds have combined assets in excess of US$6 trillion. The Cayman courts are therefore experienced in resolving disputes of the highest magnitude and regularly produce judgments which are relied upon in many jurisdictions. Its laws and legal system are well developed and extremely well versed in the financial and corporate arenas.

Arbitration in the Cayman Islands, as a viable form of alternative dispute resolution, was traditionally not suited to international cases. The old Arbitration Act of 2001 was based on the UK's Arbitration Act 1950. It contained what would now be considered to be weaknesses relating to the wider powers of the court to control arbitration proceedings. A prime example was the court's power to continue court proceedings that had been commenced despite there being a valid arbitration clause. These anachronisms were remedied by the Arbitration Act, 2012 (the "Act"). This was modelled on the UK's Arbitration Act 1996 and the provisions of the UNCITRAL Model Law ("Model Law").[1,2] It was a complete and effective overhaul of the former arbitration position in the Cayman Islands, and a response to the growing importance of arbitration as a dispute resolution alternative.

In common with many jurisdictions, the Cayman Islands has seen arbitration growing in popularity.[3] Arbitration clauses are increasingly being included in commercial contracts and there is anecdotal evidence of greater recognition among practitioners and clients alike of the potential benefits of arbitration in the jurisdiction. As a result, there are now many reported cases from the Grand Court which relate to arbitrations in the Cayman Islands. No doubt the pro-arbitration legal framework and policies, the geographical location of the Cayman Islands, and business-friendly immigration rules, help to make arbitration a sensible alternative for many potential litigants. Arbitration is firmly on the menu of choices available to clients operating in the Cayman Islands. Consistent with this shift toward the greater use of arbitration, the Cayman International Arbitration Centre is expected to

open its doors in the near future, providing world-class specialist hearing facilities, its own arbitration rules and case administration services. Likewise, in 2020 the Chartered Institute of Arbitrators established a Cayman Islands Chapter.

The guiding principles

The provisions of the Act are expressly stated to be founded on the following principles:[4]

(i) the object of arbitration is to obtain the fair resolution of disputes by an impartial arbitral tribunal without undue delay or undue expense;
(ii) the parties should be free to agree how their disputes are resolved, subject only to such safeguards as are necessary in the public interest; and
(iii) in matters governed by the Act, the court should not intervene except as provided in the Act.

These provide the bedrock for the construction and operation of arbitration clauses in the Cayman Islands.

The arbitration agreement

Formalities

The formalities required by the Act for any arbitration agreement follow those set out in Article 7 of the Model Law. Thus, agreements must be in writing, and may be contained in arbitration clauses in wider agreements or in separate agreements. Being "*in writing*" includes electronic communications such as email or anything which provides a record of the agreement.[5] A suggested model clause is included in a Schedule to the Act for the parties to include if they are unable to agree the formulation of the arbitration clause.[6]

The Act includes an opt-out where one of the parties is a consumer in an arbitration agreement entered into in the Cayman Islands. In such a case, after a dispute has arisen, the consumer must certify in writing that he has read and understood the arbitration agreement and agrees to be bound by its terms before it may be enforced.[7] Although the term "consumer" is broadly defined in the Act, the Grand Court has confirmed that the provision applies only to individuals acting for purposes that are wholly or mainly outside their trade, business, craft or profession.[8]

Arbitrability

There is nothing within the Act that limits the scope of any arbitration save where it is contrary to public policy, or the dispute is not capable of resolution by arbitration.[9]

The issue is determined on a case-by-case basis, with the vast majority of commercial disagreements being arbitrable. However, this is not always the case. In ***Cybernaut Growth Fund***,[10] it was held that a petition to wind up a company and appoint an arbitrator was not arbitrable. While this decision was doubted, it was not overruled in the appellate court in ***Re SPhinX Group***, where it was held that an argument over the distribution of a reserve in a court-supervised liquidation could be determined by arbitration. In April 2020, the Cayman Islands Court of Appeal in ***Re China CVS (Cayman Islands) Holding Corp*** allowed an appeal against a 2019 decision of the Grand Court to stay a "just and equitable" winding-up petition on the grounds that the subject matter of the dispute must be referred to arbitration, holding that since the threshold question of whether to wind up a company is to be determined by the Court alone, the subject matter of such a petition is not capable of being determined by arbitration. Accordingly, in the absence of a non-petition clause, this is now an established exception to the arbitrability of a dispute. On the other hand, the recent Grand Court decision in ***Re Grand State Investments Limited***[11] confirms *obiter* that where the subject matter of the dispute falls squarely within the scope of an arbitration agreement

and that dispute concerns the validity and existence of a debt claimed in a winding-up petition, the petition will be stayed (on the facts of that case, it was struck out). Likewise, in ***Re Asean Infrastructure Fund II, LP***,[12] the Court of Appeal upheld the Chief Justice's refusal to stay a winding-up petition where the issues which arose in a winding-up petition were different from those which were the subject of an agreement to arbitrate.

In certain instances, statutory remedies and orders pursuant to regulatory laws are only available from the Grand Court.

Joinder

There is no express mechanism within the Act that allows joinder of another party to the arbitration. Parties may agree to consolidate proceedings or hearings; however, the arbitral tribunal has no other power enabling it to do so.[13] Confirmation of this came in ***Unilever v ABC International***[14] where the respondent to an arbitration failed in its attempt to commence arbitral proceedings against several previous owners of the Claimant company.

Competence-competence and separability

Section 27 of the Act preserves the doctrine of competence-competence (found at Article 16 of the Model Law) that the arbitral tribunal has the power to rule on all matters connected to the arbitration, including its own jurisdiction and the validity of any arbitration agreement. The same section enshrines the doctrine of separability, meaning that for the purposes of considering its jurisdiction, the tribunal treats the arbitration clause as standing independently of the balance of the agreement. Any matter concerning the jurisdiction of the arbitral tribunal must be raised in the arbitration itself. The tribunal can then either deal with the matter as a preliminary question or in its award on the merits.[15] This enables the arbitration to continue notwithstanding any such application. A ruling that the arbitral tribunal does not have jurisdiction is open to application to the court as long as the application is made within 30 days.[16]

Proceedings commenced in breach of an arbitration agreement

Where a party to an arbitration agreement commences proceedings in the courts of the Cayman Islands in breach of an arbitration agreement, the court is bound to stay such proceedings on the application of a party to the arbitration agreement made at any time after the acknowledgment of service and before taking any step in the proceedings.[17]

The Grand Court's jurisdiction to grant an anti-suit injunction to restrain a party from continuing proceedings instituted in a foreign jurisdiction in breach of a Cayman arbitration agreement was first recognised in ***Origami Partners***.[18] More recently, an anti-suit injunction was granted by the Grand Court in ***BDO Cayman Ltd v Argyle Funds SPC Inc.***[19] to restrain the joint official liquidators of a Cayman company from continuing proceedings commenced in New York in breach of arbitration agreements.

Arbitration procedure

General duties

The general duties of the arbitral tribunal are to: (a) act fairly and impartially; (b) allow each party a reasonable opportunity to present its case; (c) conduct the arbitration without unnecessary delay; and (d) conduct the arbitration without incurring unnecessary expense.[20]

Commencement

Arbitral disputes commence on the date at which one party: (a) gives the other notice of an intention to submit a dispute; (b) serves on the other a notice requiring it to appoint or agree to the appointment of an arbitrator; or (c) serves on the other a notice requiring it to submit

the matter to an arbitrator already named in the agreement.[21] The form of the notice is not prescribed.

Seat of arbitration

The Act contains no geographical restriction upon the seat of arbitration; however, in default of agreement it is left to the tribunal to decide, having regard to the circumstances of the case and the convenience of the parties.[22] Hearings, and meetings among tribunal members, may be convened at any place the tribunal considers appropriate.[23]

Procedural requirements

The parties are free to agree the rules of the tribunal, failing which it will conduct the arbitration as it sees appropriate.[24] It is not uncommon for agreements to refer to the rules of international organisations such as the AAA, LCIA and ICC. The tribunal can then deal with any challenges to jurisdiction and scope, and move on to consider specific procedural requirements relevant to the case being considered, such as the timings of Statements of Claim and Defence,[25] and whether oral hearings are necessary.

Evidential rules

An arbitral tribunal is not bound by the rules of evidence but may inform itself in relation to any matter it thinks fit.[26] The Act also follows precisely Article 19(2) of the Model Law, which gives the tribunal the power to determine admissibility, relevance, materiality and weight.[27] The Grand Court in ***Appalachian Reinsurance (Bermuda) Ltd v Mangino***[28] upheld a decision not to have an oral hearing in a summary judgment application relying in part on the parties' agreement that the tribunal was not obliged to follow "*judicial formalities or rules of evidence*". In practice, this evidential rule makes appeals to the substance of arbitration awards difficult, although decisions taken irrationally may still be challenged on the grounds that the award is contrary to natural justice.

Expert evidence

The parties may agree whether or not expert evidence is necessary and, if so, the number of experts. Where there is no agreement, the tribunal may appoint experts and require the parties to provide access to, or produce, documents, goods or property for inspection by the expert.[29]

Confidentiality

Arbitral proceedings are generally confidential, arising – as they often will – from commercial contracts containing confidentiality clauses. The Caymanian courts will follow the English common law in implying a term for which the arbitral proceedings and documents are confidential.[30] The Act enshrines this by making arbitrations both private and confidential[31] and making theoretically actionable any disclosure of confidential information by a party or the tribunal.[32] There is no record of arbitrations.

Should the arbitration require intervention by the court for any reason, any party may request that applications to the court be heard in private, and that information only be published if the court is satisfied that the information is not of a type that a party would wish to remain confidential. Judgments in court proceedings arising out of arbitrations may be published (as normal); however, any party has the right to apply for parts of the judgment to remain undisclosed[33] or undisclosed for a certain period of time.[34]

Arbitrators

Appointment

The parties are free to choose the number of arbitrators on the tribunal[35] (in practice, almost

always either one or three) and the procedure for selection.[36] In default, the Act provides there shall be a single arbitrator.[37] The UK Supreme Court held in ***Jivraj v Hashwani***[38] that it was not contrary to equality legislation to include arbitration clauses that stipulated the religion (and, by extension, the race, nationality and gender) of an arbitrator. It is therefore unlikely that the Cayman courts would strike down similar arbitration clauses.

Any arbitrator appointed has a duty to declare matters that might give rise to doubts about his or her independence or impartiality.[39]

Challenge

A challenge to the appointment of an arbitrator may only be made on the narrow ground of there being justifiable doubts about his or her independence, impartiality or qualification for the role.[40]

The parties may agree on the procedure for challenging an arbitrator.[41] If there is no such agreement, then the Act incorporates the timings of the challenge contained at Article 13 of the Model Law; namely, that a party has 15 days to send to the tribunal written reasons for the challenge.[42] The tribunal will then decide and any further challenges must be made to the court within 30 days of the tribunal's decision.[43] The arbitration may continue in the interim.[44] There is no further appeal from the decision of the court.[45]

A party may apply to the court for an arbitrator to be removed who is physically or mentally incapable of conducting proceedings (or where there exist justifiable doubts about the same).[46] Likewise, an arbitrator may be removed by the court where he or she has refused or failed to conduct proceedings properly or with due expedition, and the same has or could lead to substantial injustice to a party.[47]

Immunity

It was not clear whether arbitrators shared the long-established principle of judicial immunity from suit to be found in the English common law.[48] Any doubt in the Cayman Islands is removed by Section 25 of the Act which gives the tribunal and any of its employees or agents immunity for negligent acts or omissions or mistakes of law or procedure. Liability still remains for actions carried out in bad faith.[49]

Interim relief

The Act has a system of "Interim Measures" and "Preliminary Orders"[50] mirroring that in the Model Law.

Unless the parties agree otherwise, the arbitral tribunal has broad powers to grant interim measures which: (a) preserve the *status quo*; (b) prevent any action that may harm the arbitral process; (c) preserve assets; and/or (d) preserve evidence.[51] A grant of an interim measure will only be made if the party requesting the measure can satisfy the tribunal that: (i) if any harm caused is not remediable by damages, then the harm caused by the measure substantially outweighs the harm that would be caused by not granting it; and (ii) there is a reasonable possibility that the requesting party will succeed on the merits of the claim.[52]

At the same time as requesting a without-notice interim measure, a party may also seek a preliminary order, the purpose of which is to direct the counter-party not to frustrate the purpose of the interim measure requested.[53] This will be granted if the tribunal believes that the counter-party would frustrate the interim measure had it received notice of the application.[54] This is a more serious measure, because it carries with it a negative connotation regarding the rectitude of the counter-party. Immediately after making a preliminary order, the tribunal will give notice to any other parties, and grant them an opportunity to present their case at the earliest practicable time.[55] A preliminary order will expire 20 days after its issue.[56]

The tribunal may ask the requesting party to provide appropriate security in connection with the interim measure.[57] By contrast, the party applying for a preliminary order must provide security unless the tribunal regards it as inappropriate or unnecessary to do so.[58] The tribunal may require any party requesting an interim measure to promptly disclose any material change in circumstances.[59] A party applying for a preliminary order must disclose all circumstances that are relevant to the granting or maintaining of the order.[60] If it later transpires that the interim measure or preliminary order should not have been granted, the requesting party may be liable for costs and damages.[61] These can be awarded at any time during the proceedings.[62]

Unlike some other jurisdictions, where an emergency arbitrator can be appointed in advance of the constitution of the tribunal, the Act does not provide for any such emergency remedies.

The arbitration award

Formalities

The formalities of the award required by Article 31 of the Model Law are brought into the Act by Section 63. The award must be in writing, signed by all or the majority of arbitrators,[63] and should provide reasons for the decision unless otherwise agreed, or the matter has settled on agreed terms.[64] The award must state on its face the date of the award and the seat of the arbitration.[65] There is no time limit within which an award must be made following the conclusion of the tribunal proceedings;[66] however, (as stated above) the parties may apply for an arbitrator to be removed if he or she has not acted with due expedition. In practice, awards are typically produced promptly. If the time for making an award is stipulated in the arbitration agreement, the parties may, unless they agree otherwise, apply to the court for an extension of time.[67]

Within 30 days of an award being received a party may ask, on notice, that it be corrected for minor mistakes[68] or that specific points be interpreted.[69] The Act allows the tribunal 30 days to respond.[70] The parties may also within 30 days ask for an additional award in respect of claims presented in the arbitration but not decided in the award.[71] The tribunal is initially permitted 60 days within which to respond.[72]

Remedies available to the tribunal

The parties are able to agree the powers of the tribunal when it comes to available remedies.[73] Unless the parties otherwise agree, the arbitral tribunal is able to award any relief that a court could have awarded had the matter been litigated in a civil court.[74] Unlike some other jurisdictions, there is nothing that prevents the tribunal making an award for specific performance in respect of land.

The Act gives the tribunal a discretionary power to award interest on some or all of any award for any period.[75] The rate of interest after the award is the same as that for a judgment debt.[76] In the Cayman Islands, this rate is to be found in the Judgment Debts (Rates of Interest) Rules 2012. This will vary depending on the currency in which the award was made. For instance, damages in US dollars gather interest at 2.375%, but in South African Rand the relevant rate is 7.125%.[77]

Costs

The Act provides that unless otherwise expressly stated, costs are at the complete discretion of the arbitral tribunal.[78] There are no provisions which direct the way in which the discretion ought to be exercised. It is likely to be guided by the law of the arbitration agreement.

Third-party funding

There has been a trend in the Cayman Islands towards the recovery of third-party funding.

The Grand Court has approved the same where it has been used to fund liquidation estates who could not otherwise have afforded their actions.[79] The English High Court in the landmark case of ***Essar Oilfields Services Limited v Norscot Rig Management PVT Limited***[80] has held that it is permissible to recover those costs in arbitral proceedings. This position was adopted in ***A Company v A Funder***[81] where such funding was obtained by a party seeking to recognise and enforce a New York arbitration award in the Cayman Islands.[82]

It was said by Segal J that:

> *"Cayman has an important, world-class court system and litigation culture and there is no reason why responsible, properly regulated commercial litigation funding undertaken in accordance with the principles I have set out should not have a place in this jurisdiction. As has been accepted in other leading financial centre common law jurisdictions and as the Chief Justice noted in* ***Quayum****, the law of maintenance and champerty has evolved reflecting the evolution of public policy and that evolution should be reflected in Cayman law."*

Third-party litigation funding has recently been the subject of legislative reform through the Private Funding of Legal Services Act, 2020, which came into force in May 2021. Consequently, further funding options are available for Claimants, funders and attorneys involved in Cayman Islands litigation and arbitration, and the offences of maintenance and champerty have been repealed. This has liberalised significantly the market for third-party funding of litigation and arbitration in the jurisdiction.

Challenge to the award

Seasoned practitioners know the difficulties in challenging a final decision of an arbitral tribunal. Section 75(1) of the Act broadly follows Article 34 of the Model Law and permits the court to set aside an award on any of the following grounds:

(i) incapacity of a party;
(ii) invalidity of the arbitration agreement;
(iii) lack of proper notice of the appointment of the arbitrator or proceedings;
(iv) inability to present the case;
(v) the award oversteps its jurisdiction in dealing with irrelevant matters;
(vi) the panel or procedure was not in accordance with the agreement of the parties (unless the agreement itself would not have been lawful);
(vii) the making of the award was induced or affected by fraud, corruption or misconduct on the part of the arbitrator;
(viii) a breach of natural justice occurred in connection with the making of the award by which the rights of any party have been prejudiced;
(ix) the subject matter of the dispute is not arbitrable; or
(x) the award is contrary to public policy.

Any application to the court must be made within 30 days of the aggrieved party receiving the award.[83]

Whilst there is no express provision allowing the court to set aside an award on the grounds that a serious irregularity has taken place, this will generally be caught by the power to set aside an award on the ground that there has been a breach of natural justice.

Parties have a limited right to appeal to the court on a point of law.[84] Leave of the court will be required.[85] Leave will only be given if the question of law was one that was before the tribunal, is one that would substantially affect the rights of one or more of the parties, and the tribunal's decision was obviously wrong or, where the point is of general importance, is

at least open to serious doubt.[86] Any further applications to appeal require leave of the court, and will only be given if the matter is of general importance or there is other special reason.[87]

Any applications to set aside awards or appeals must be made within 30 days of an award and only after all arbitral processes have been exhausted.[88]

Enforcement of the award

The Cayman Islands is a signatory to the New York Convention. The Convention is widely regarded as one of the most successful international treaties, with about 157 participant nations. The enforcement of awards made in such countries is governed in the Cayman Islands by the Foreign Arbitral Awards Enforcement Act (1997 Revision) (the "Enforcement Act").

The preconditions set out in the Convention are that originals, or certified copies, of the arbitration agreement and award are provided (suitably translated if necessary).[89] The courts will recognise the award, and enforcement can only be challenged on grounds similar to those in which a domestic award could be challenged, namely:[90]

(i) the parties to the agreement were under some incapacity or the arbitration agreement was not valid under the law of the agreement or under the law of the country where the award was made;
(ii) the losing party was not given proper notice of the appointment of the arbitrator or of the arbitration proceedings or was otherwise unable to present his or her case;
(iii) the award deals with matters falling outside the terms of the submission to arbitration, or contains decisions on matters beyond the scope of the submission (provided that if the decisions on matters submitted to arbitration can be separated from those not submitted, then that part of the award may be recognised and/or enforced);
(iv) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties or, failing such agreement, was not in accordance with the law of the country where the arbitration took place;
(v) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which, or under the law of which, that award was made;
(vi) the subject matter of the difference is not capable of settlement by arbitration under the law of that country; or
(vii) the recognition or enforcement of the award would be contrary to the public policy of that country.

If necessary, the Convention will be interpreted in accordance with principles of international law as set out in Articles 31 and 32 of the Vienna Convention on the Law of Treaties.

Section 72(5) of the Law provides that any arbitral award, irrespective of the country in which it was made, shall be enforceable.

It is relatively straightforward to enforce an arbitral award in the Cayman Islands, particularly by comparison to the enforcement of foreign judgments which generally fall to be enforced under the common law. An award will be enforced as if it were a domestic judgment, and all the ordinary enforcement mechanisms are therefore available.

Challenges to the enforcement in Cayman of a foreign award failed in ***In the matter of China Healthcare Inc.***,[91] and, more recently, on appeal in ***GOL Linhas Aéreas S.A. v Matlin Patterson Global Opportunities Partners (Cayman) II L.P. & others***.[92] In ***GOL Linhas***, a case concerning the enforcement of a Brazilian award in a fraud action, the Cayman Islands Court of Appeal robustly upheld the orthodox position that questions as to whether a party has submitted to arbitration (and, if so, the scope of the arbitration) are to be determined by the

governing law of the arbitration, rather than by the jurisdiction in which the award is sought to be enforced. On the facts, these questions had already been determined in first instance and appeal court proceedings in Brazil, with the effect that the Cayman courts should not interfere with those findings. Likewise, the judgment confirms that in order to avoid enforcement in Cayman on the grounds of a breach of due process in the arbitration, or a breach of Cayman Islands public policy, a party must demonstrate clear evidence of injustice, which was absent in this case. Therefore, the Cayman Islands Court of Appeal overturned the first instance decision to refuse enforcement, although a stay of enforcement was granted pending the outcome of a final appeal in Brazil. Recently, in ***Re Guoan International Limited***,[93] Justice Kawaley suggested that in *GOL Linhas* a stay was only granted because it was too late for the court to do what the relevant statutory regime contemplated; namely, to allow the court before which enforcement is sought to adjourn the enforcement proceedings pending the outcome of set aside proceedings in the context of the seat.

In addition to the pure question of enforcement of an arbitral award, issues may arise in the context of applications for ancillary relief such a *Norwich Pharmacal* Order or "NPO" (i.e. disclosure order to compel an innocent third party mixed up in wrongdoing to provide information and documents to the victim of the wrongdoing). The recent Court of Appeal decision in ***Essar Global Fund Limited and anor v ArcelorMittal USA LLC***[94] concerned non-satisfaction by the appellants' subsidiary of a US$1.38 billion ICC arbitral award in favour of the respondent, to whom the Grand Court had granted a NPO requiring the appellants to provide relevant information and documents. On appeal, the appellants contended, *inter alia,* that the Cayman Islands courts had no jurisdiction to grant *Norwich Pharmacal* relief in support of potential foreign proceedings, and a NPO could not properly be granted to support a foreign award that was not enforceable in the Cayman Islands. The Court of Appeal rejected those arguments and dismissed the appeal. In doing so, the Court of Appeal readily overcame a technical procedural objection to the enforceability of the foreign award in the Cayman Islands, and provided guidance as to when non-satisfaction of an arbitral award may amount to sufficient wrongdoing justifying the granting of a NPO. In summary, the applicant must show that the failure to satisfy the award results from some further or different wrongdoing (as distinct from the conduct that led to the making of the award) and an arguable case as to the existence of some available remedy or other legal redress. Typically, wilful evasion of an established debt will give rise to legal redress, through anti-avoidance insolvency legislation which exists in most legal systems.

* * *

Endnotes

1. United Nations Commission on International Trade Law Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006.
2. Section 4 of the Act gives the UNCITRAL Model Law force of law save as amended.
3. https://www.campbellslegal.com/client-advisory/rise-arbitration-cayman-islands-3319/.
4. Section 3(3). See also ***Appalachian Reinsurance (Bermuda) Ltd v Greenlight Reinsurance Ltd*** [2014] 1 CILR 152.
5. Section 4(3) of the Act.
6. Section 4(2) of the Act.
7. Section 8(1) of the Act.
8. ***BDO Cayman Ltd v Argyle Funds SPC Inc (in Official Liquidation)*** [2018 (1) CILR 114]. A note produced by Campbells is at: https://www.campbellslegal.com/

client-advisory/anti-suit-injunction-granted-grand-court-restrain-cayman-liquidators-continuing-new-york-litigation-3676/.

9. Section 26(1) of the Act.
10. [2014] (2) CILR 4133.
11. Unreported judgment of Justice Parker dated 28 April 2021.
12. Unreported ruling of the Cayman Islands Court of Appeal dated 13 November 2020.
13. Section 36 of the Act.
14. [2008] CILR 87.
15. Section 27(8) of the Act.
16. Section 27(9) of the Act.
17. Section 9 of the Act.
18. ***Origami Partners III LP v Pursuit Capital Partners (Cayman) Limited*** [2012] (2) CILR 191.
19. ***BDO Cayman Ltd v Argyle Funds SPC Inc (in Official Liquidation)*** [2018 (1) CILR 114]. This decision was the subject of a successful partial appeal, in ***Argyle Funds SPC Inc (in Official Liquidation) v BDO Cayman Ltd***, CICA (Civil) 8 of 2018, unreported, 8 October 2018; however, the appeal did not concern the anti-suit injunction granted to enforce the arbitration agreements.
20. Section 28 of the Act.
21. Section 12(1) of the Act.
22. Section 30(2) of the Act.
23. Section 30(3) of the Act.
24. Section 29 of the Act.
25. Section 32(1) of the Act.
26. Section 33(6) of the Act.
27. Section 29(3) of the Act.
28. ***Appalachian Reins. (Bermuda) Ltd. v Mangino*** [2014] (1) CILR 152.
29. Section 37 of the Act.
30. ***Glidepath BV and Ors v John Thompson and Ors*** [2005] EWHC 818 (Comm).
31. Section 81(1) of the Act.
32. Section 81(2) of the Act.
33. Section 84(3) of the Act.
34. Section 84(3)(b) of the Act.
35. Section 15(1) of the Act.
36. Section 16(1) of the Act.
37. Section 15(2) of the Act.
38. [2011] UKSC 40.
39. Section 18(1) of the Act.
40. Section 18(3) of the Act.
41. Section 19(1) of the Act.
42. Section 19(2) of the Act.
43. Section 19(4) of the Act.
44. Section 19(6) of the Act.
45. Section 19(5) of the Act.
46. Section 20(1)(a) of the Act.
47. Section 20(1)(b) of the Act.
48. ***Sutcliffe v Thackrah*** [1974] AC 727 and ***Arenson v Arenson*** [1977] AC 405.
49. Section 25(4) of the Act.

50. Part VIII of the Act.
51. Section 44 of the Act.
52. Section 45(1) of the Act.
53. Section 46(1) of the Act.
54. Section 45(2) of the Act.
55. Section 47(2) of the Act.
56. Section 47(4) of the Act.
57. Section 49(1) of the Act.
58. Section 49(2) of the Act.
59. Section 50(1) of the Act.
60. Section 50(2) of the Act.
61. Section 51(1) of the Act.
62. Section 51(2) of the Act.
63. If any arbitrator's signature is missing, a reason should be provided: Section 63(1)(b) of the Act.
64. Section 63(2) of the Act.
65. Section 63(3) of the Act.
66. Section 59(1) of the Act.
67. Section 60(1) of the Act.
68. Section 69(1)(a) of the Act.
69. Section 69(1)(b) of the Act applying Article 33 of the Model Law.
70. Section 69(2) of the Act.
71. Section 69(4) of the Act.
72. Section 69(5) of the Act, which can be extended by 30 days: Section 69(6).
73. Section 57(1) of the Act.
74. Section 57(2) of the Act.
75. Section 58(1) of the Act.
76. Section 58(3) of the Act.
77. http://www.gov.ky/portal/pls/portal/docs/1/11525535.PDF.
78. Section 64(1) of the Act.
79. ***Re ICP Strategic Credit Income Fund Ltd*** [2014] 1 CILR 314.
80. [2016] EWHC 2361.
81. Unreported judgment of Justice Segal dated 23 November 2017.
82. A note produced by Campbells is at: https://www.campbellslegal.com/client-advisory/cayman-court-approves-litigation-funding-agreement-3561/.
83. Section 75(2) of the Act.
84. Section 76(1) of the Act.
85. Section 76(1) of the Act.
86. Section 76(4) of the Act.
87. Section 76(11) of the Act.
88. Section 77(2) and (3) of the Act.
89. Article IV of the Convention.
90. Article V of the Convention.
91. Unreported judgment of Justice Kawaley dated 3 October 2018.
92. Unreported judgment of the Cayman Islands Court of Appeal dated 11 August 2020.
93. Unreported judgment of Justice Kawaley dated 21 October 2021.
94. Unreported judgment of the Cayman Islands Court of Appeal dated 29 December 2020.

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Andrew specialises in commercial litigation, international arbitration and dispute resolution. He has extensive experience acting for clients in complex and high-value disputes, typically with a cross-border element. Andrew previously practised in both London and Australia with a major international firm, and holds postgraduate qualifications in both applied finance and international dispute resolution.

Andrew has experience litigating in jurisdictions throughout the world, as well as conducting institutional and *ad hoc* arbitrations under a variety of different rules (including ICC, LCIA, AAA and UNCITRAL). Prior to joining Campbells in 2014, Andrew practised at DLA Piper in both Australia (2006–2009) and London (2009–2013). In London, Andrew specialised in international dispute resolution with a particular focus on international arbitration. He has extensive experience coordinating and leading teams in major, complex and high-value disputes. He has particular expertise advising clients in respect of investment fund and other financial services disputes (especially claims against administrators, custodians and auditors), professional negligence claims and a broad range of contractual disputes. His clients have included foreign governments, major banks, leading professional services firms and other multinationals spanning a number of sectors.

Andrew is concurrently Vice Chairman of the Caribbean Branch of the Chartered Institute of Arbitrators (CIArb) and the Chairman of the Cayman Chapter of CIArb. Andrew is ranked by *Chambers and Partners* for Cayman Islands dispute resolution and is named a "Future Leader" among Cayman Islands litigation Partners by *Who's Who Legal*.

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Shaun is Counsel in Campbells' Litigation, Insolvency & Restructuring Group. Shaun represents investment funds, directors, trustees, professional firms and their insurers in high-value litigation and arbitration. He is an expert in professional liability and is the author of *Don't Shoot the Advisor: A defence lawyer's guide to protecting your position and preventing lawsuits*. Shaun is also Secretary of the Cayman Chapter of CIArb.

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