

BRIEFING NOTE

Interpretation of Contracts under English and Singapore Law

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Introduction

One issue that frequently arises in international commercial disputes is the interpretation of contract terms. In the context of that dispute, what are the rules of interpretation and what evidence may be submitted in support of one party's interpretation as against that of the counter party?

English Law

Under English legal principles, the Court must ascertain what a reasonable person, having all the background knowledge which would reasonably have been available to the parties at the time of the contract, would have understood the contracting parties to have meant by the language that they used in the contract: see *Rainy Sky SA v Kookmin Bank* [2011] UKSC 50, [2011] 1 WLR 2900.

The Court will adopt the ordinary and natural meaning of the language of the contract if clear and unambiguous language has been used, even if that produces a commercially undesirable result for one of the parties. That is because the Courts recognise that parties do not always enter into contracts for commercial reasons or enter contracts for commercial reasons that change over time.

If the words used are ambiguous, or if the plain meaning of the words would produce absurd results, then the Court may consider facts and matters that were reasonably known to the parties at the time of contracting, as well as commercial common sense, to interpret and apply the contract. This will mean examining the competing interpretations against the background facts and matters known to the parties and the commercial outcome that each of those interpretations produces.

Taking this approach means that the Court will disregard evidence about the subjective intentions of the parties: see *Rainy Sky at* [19]; *Arnold v Britten* [2015] UKSC 36, [2015] AC 1619 at [15]. Such evidence is disregarded because that evidence is likely to conflict, with each party maintaining opposite and conflicting intentions, and will not assist the Court in interpreting the contract.

Singapore Law

Under Singapore law, the Courts will follow broadly the same approach. The Courts will apply the clear and unambiguous meaning of the words used in the contract. The Courts will only look to facts and matters reasonably known to the parties at the time when the contract was entered to assist in contract interpretation if the words used in the contract are unclear. In a similar approach to the English Courts, absent an absurd outcome, the Singapore Courts prefer to apply the ordinary and natural meaning of the words rather than a particular commercial approach when determining how the words used in the contract should be interpreted and applied to the facts before the Court.

Pursuant to Section 94 of the Evidence Act (Cap 97), extrinsic evidence not forming part of the written contract is generally inadmissible. However, there are limited exceptions that allow the admission of

extrinsic evidence such as to invalidate a document on the basis of fraud or illegality or to assist in the contractual interpretation of the contract.

In ***Zurich Insurance (Singapore) Pte Ltd v B-Gold Interior Design & Construction Pte Ltd [2008] SGCA 27***, the Singapore Court of Appeal held that extrinsic evidence is admissible for purposes of interpreting a contract if it is “*relevant, reasonably available to all the contracting parties and relates to a clear or obvious context.*” (the “**Zurich Principles**”). While the Singapore Court of Appeal in ***Xia Zhengyan v Geng Changqing [2015] SGCA 22*** endorsed the Zurich Principles, it held that “*the issue of whether evidence of prior negotiations should be included under Singapore law remains open*”. Although there has been no recent determination on this point, the cases demonstrate that the Singapore Courts remain cautious in admitting extrinsic evidence in the interpretation of contracts.

Summary

Under English and Singapore law, the Courts will examine the language used in the contract, both within the particular clause and within the context of the language used throughout the contract.

If the language is clear and unambiguous, the Courts apply the ordinary meaning of the words used. If the words are not clear, or there are two reasonable and competing interpretations, the Courts will look to the facts and matters available to the parties at the time when they entered the contract and the commercial consequences of each interpretation before the Court. They will not look at the subjective intention of each party that entered the contract to identify the reasonable meaning.

Rules permitting the admission of extrinsic evidence in the interpretation of contracts vary across jurisdictions, but the English and Singapore Courts admit such evidence in narrow and limited circumstances. The Courts in civil law jurisdictions tend to adopt a broader approach.

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