Hong Kong Court Refuses to Stay Company's Claim Against Its Own Directors and Former Shareholders in Favour of Arbitration—*Soremi Investments Ltd v China National Gold Group Hong Kong Limited and China National Gold Group Co., Ltd.* [2025] HKCFI 4514

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Background. The dispute in *Soremi Investments* concerned ownership of Soremi Investments Limited ("Soremi"), the owner of 90% of Société de Recherch et d' Exploitation Miniere Société Anonyme, the operator of a mining and processing project in the Republic of Congo.[1]

Soremi was wholly owned by Global Mining Development L.P. ("Global") until 17 March 2014, when Global sold 65% of the Company's shares to China National Gold Group Hong Kong Limited ("CNG"), which is a subsidiary of the China National Gold Group Corporation (a Chinese state-owned enterprise).

As part of the sale, Global and CNG entered into a shareholders' agreement (the "SHA").[2] The SHA contained an arbitration agreement that covered "*any dispute arising out of or relating to the SHA*" and "*any dispute regarding non-contractual obligations arising out of or relating to the SHA*".[3] Soremi was also party to the SHA but only to give effect to a provision requiring Soremi to distribute dividends to CNG and Global.

A dispute arose in March 2020 between Global and CNG over the ownership of CNG's shares in Soremi. The dispute was decided by a Hong Kong-seated, Hong Kong International Arbitration Centre (HKIAC) arbitration, which concluded in March 2023 with an award directing that CNG transfer its 65% shareholding in the Company back to Global.[4]

Soremi alleged that CNG then undertook a campaign to frustrate the return of ownership of Soremi to Global. This included: (i) litigation in the British Virgin Islands ("BVI") to set aside the order enforcing the award as well as (ii) procuring that CNG's

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1 *Soremi Investments Ltd v China National Gold Group Hong Kong Limited and China National Gold Group Co., Ltd.* [2025] HKCFI 4514 ("Judgment"), paragraph 4(1).

2 Judgment, paragraph 18.

3 Judgment, paragraph 26.

4 Judgment, paragraph 4(4).

appointed directors of Soremi (together with Soremi's then CEO) transfer USD 109.2 million from the Company to its subsidiary.

This campaign ended in July 2025, when the BVI court rectified Soremi's share register in favour of Global.[5] Soremi then commenced proceedings in the Hong Kong courts to seek return of the USD 109.2 million. Soremi brought claims: (i) in tort for conversion against CNG and its parent company; (ii) for breaches of the Directors' fiduciary duties; (iii) for dishonest assistance by CNG; and (iv) for lawful and unlawful means conspiracy.[6]

CNG applied to stay the Hong Kong court action on the basis that Soremi's claims were covered by the SHA's arbitration clause.[7]

Decision. The Court applied the ordinary principles governing applications for stay of court proceedings in favour of arbitration under Section 20 of the Hong Kong Arbitration Ordinance (Cap. 609), which mirrors Article 8 of the UNCITRAL Model Law and gives effect to Article II.3 of the New York Convention. The central issue before the Court was whether the dispute fell within the ambit of the SHA's arbitration clause. If it did, then a stay should be ordered.

The starting point of this analysis was the *Fiona Trust*[8] presumption that rational commercial parties are likely to intend for all disputes arising from their relationship to be referred to the same tribunal, and that the arbitration agreement should be construed as such.

The Court noted that the arbitration agreement was drafted broadly, but nevertheless held that CNG had not established that the arbitration clause covered the dispute, including because:

- *First*, the terms of the SHA, together with the fact that it was entered contemporaneously with the sale of shares to CNG, demonstrated that the purpose of the SHA was to regulate the relationship between CNG and Global.[9]

5 Judgment, paragraph 4(10).
6 Judgment, paragraph 3.
7 Judgment, paragraph 7.
8 *Fiona Trust and Holding Corporation v Privalov* [2007] Bus LR 1719.
9 Judgment, paragraphs 18–20.

- *Second*, since it was only a party to the SHA to give effect to the provision requiring it to distribute dividends to CNG and Global, Soremi was held to be a "*non-transacting party*".[10]

- *Third*, the substance of the dispute in the Hong Kong court proceedings was the alleged misappropriation of Soremi's assets. None of the claims were premised on CNG's breach of the SHA.[11] Nor was CNG's proper performance (or breach) of the SHA legally relevant as a defence to Soremi's claims.[12]

The Court therefore dismissed CNG's application to stay the Hong Kong court proceedings.

Comment. The Court's decision in *Soremi Investments* is the latest judgment to defeat attempts by CNG and its directors to circumvent an arbitration award and orders from the BVI courts. It reflects the impartiality of the Hong Kong courts in relation to arbitrations and other commercial matters involving Chinese state-owned enterprises.

The decision also demonstrates that the mere existence of an arbitration clause is not sufficient to justify a stay, notwithstanding the strongly pro-arbitration stance of the Hong Kong courts.[13] Application of established legal principles will lead to dismissal of a stay application when on the proper analysis the dispute falls outside the ambit of the arbitration clause.

This decision will be of special interest to parties to joint ventures or similar corporate governance structures, particularly where parties to these agreements might be "*non-transacting*". Arbitration agreements may not be enforceable against those "*non-transacting*" entities, and parties should take care to structure their suites of agreements to ensure any intended affiliates or stakeholders fall within the arbitration agreements.

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[10] Judgment, paragraphs 23, 39–40.

[11] Judgment, paragraphs 28–34.

[12] Judgment, paragraphs 34–37.

[13] Judgment, paragraphs 39–40, 43. *See further* "Hong Kong Court Sets Aside Default Judgment in Favour of Arbitration" and "Key Developments in Hong Kong Arbitration Law".

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