

COMPANY LAW

Offshore companies – Disclosure of information – Application for leave to disclose – Whether application for disclosure may be made under the Labuan Companies Act 1990 – Circumstances when application can be made – Labuan Companies Act 1990, section 149

Portcullis Trustnet (Singapore) Pte Ltd & Ors v Cardiff Ltd & Anor

[2015] 6 CLJ 10, Court of Appeal

Facts The first and second appellants were part of a group of companies founded by the third appellant. The first appellant was incorporated in Singapore while the second appellant was incorporated under the Labuan Companies Act 1990 (“the Act”). The third appellant was the director of both the first and second appellant. The first respondent was an offshore company incorporated in Labuan with the entire share capital registered in the name of the second appellant. The appellants were sued in the High Court of Singapore where the beneficial ownership of the first respondent was disputed and an application for production and inspection of documents relating to the first respondent was filed against them. The appellants subsequently applied to the High Court of Sabah and Sarawak, under section 149(4)(a)¹ and (6)² of the Act, for an order to permit them to disclose information pertaining to the affairs of the second appellant and the first respondent in the pending suit at the High Court of Singapore. However, the application was refused, hence, the present appeal.

Issue The issue for consideration was whether leave to disclose information concerning affairs of both offshore companies, the second appellant and first respondent, may be granted under subsections 149(4)(a) and 149(6) of the Act.

Held In dismissing the appeal, it was held that the word “court” in section 149³ can only mean High Court of Malaya or the High Court of Sabah and Sarawak. It was further held that subsection 149(4)(a) cannot be relied on to obtain leave from the court for disclosure of confidential information in connection to the affairs of an offshore company. An application for such disclosure may only be made pursuant to subsection 149(6) to a High Court of Sabah and Sarawak or to a High Court of Malaya if proceedings were pending before the High Court in question, and where the production was necessary due to the relevancy of the documents in the proceedings.

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¹Section 149(4)(a) allows disclosure of documents and information relating to the affairs of a Labuan company to be made when such disclosure is lawfully required by any Court or under the provisions of any law.

² Section 149(6) does not prevent any Court from exercising its discretion to require a person to produce any relevant documents or evidence in any Court proceedings.

³ Secrecy.