

Enforcement of Cayman Islands Equitable Share Mortgages

In Cayman Islands finance transactions, it is common for lenders to take security over the shares in a Cayman Islands entity through a Cayman Islands law governed equitable mortgage. These equitable mortgages are typically designed to make enforcement over the shares a smooth process with no need for any further cooperation by the mortgagor. In particular, the secured lender will usually have received undated share transfer forms signed by the mortgagor, giving the secured lender (and any receiver appointed by them) express authority to complete the forms upon an enforcement event. In *Yeung Ka Man v OP Multi Strategies Investment Fund*, the Cayman Islands Court ("Court") has reinforced the efficacy of this self-help remedy.

A borrower defaulted on a loan extended to it by Hongkong and Shanghai Banking Corporation Limited ("HSBC"). The security for the loan included a Cayman Islands law governed equitable mortgage over shares in the defendant Cayman Islands company, OP Multi Strategies Investment Fund ("OP Fund") owned by Glory Class Ventures Limited (the "Mortgagor"). Under the terms of the equitable mortgage, the default triggered an enforcement event, and the security became immediately enforceable by HSBC who appointed Yueng Ka Man of Alvarez & Marsal (with another) as joint and several receivers over the shares (the "Receiver"). The Receiver subsequently completed the undated share transfer form that had been pre-signed by the Mortgagor to transfer the shares into the Receiver's name and requested OP Fund's register of members to be updated accordingly. OP Fund did not update the register of members, leading to the Receiver making an application to

the Court seeking an order for rectification of OP Fund's register of members.

The legal issue was whether the undated share transfer form executed by a director of the Mortgagor, who subsequently resigned, remained valid for enforcement purposes. OP Fund raised objections, arguing that the director who signed the undated transfer form was no longer a director duly authorised by the Mortgagor to sign the form at the time the Receiver sought to rely on the document.

The Court held that the undated share transfer form was valid since the director's authority should be considered at the time the transfer document was signed, not when it was enforced. On the proper construction of the equitable mortgage and its commercial purpose, although the Mortgagor was to provide further authorisation if one of its directors were replaced, this did not mean that any documents previously signed by a duly authorised officer would be invalidated if such further authorisation was not obtained. At the time that the mortgage was executed, the Mortgagor had passed a unanimous board resolution authorising the signing of the undated transfer document. The fact that the director who signed the document later resigned therefore did not affect its validity. As a result, the Court ordered the register to be updated to show the Receiver as the registered holder of the shares.

The judgment provides clarity and assurance for secured creditors in the jurisdiction and confirms that undated transfer instruments frequently used in this manner should be valid and enforceable notwithstanding the status of the executing director at the time of enforcement.

Further Assistance

If you would like further information, please reach out to your usual Maples Group contact or any of the persons listed below.

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