

SUPREME COURT OF SEYCHELLES

Reportable
[2023]
CS100/2023

In the matter of a Letter of Request for International Judicial Assistance Pursuant to The Hague Convention of 18 March 1979 on the taking of Evidence Abroad in Civil or Commercial Matters: *Securities and Exchange Commission v/s Terraform Labs Pte Ltd & Hyeong Kwon*

Neutral Citation: Letter of Request for International Judicial Assistance (CS100/2023) [2023] (30 November 2023).

Before: A. Madeleine, J

Summary: *International Judicial Assistance - Hague Convention 18 March 1970 - Seychelles declaration of no assistance for obtaining pre-trial discovery - Assistance between contracting states*

Heard: 31st October 2023

Delivered: 30 November 2023

RULING

A. MADELEINE, J

Background

[1] By letter dated 25th September 2023 from the Ministry of Foreign Affairs and Tourism, this Court has been asked to execute a request issued by the United States District Court of the Southern District of New York in a civil action between the *Securities and Exchange Commission* and *Terraform Labs Pte Ltd. et al.*, Ref No. 1:23-cv-1346 (S.D.N.Y) (JSR) (hereinafter referred to as the “civil proceeding”) under The Hague Convention of 18 March 1970 on the taking of evidence abroad in civil and commercial matters (hereinafter referred to as the “Evidence Convention”).

[2] The request is dated 15 August, 2023 but was only received by the Supreme Court on 26 September, 2023 under cover of the letter of the Ministry of Foreign Affairs and Tourism

referred to under paragraph [1] above and a further letter from *Dentons US LLP* dated 5 September, 2023 addressed to the Ministry of Foreign Affairs and Tourism.

[3] The request is signed by the United States District Judge Jed S. Rakoff and is made under Chapter I of the Evidence Convention for the purpose of obtaining documentary evidence from MEK Global Ltd. aka KuCoin, an international business company incorporated in Seychelles (hereinafter referred to as the “request”).

[4] According to the request, the United States Securities and Exchange Commission (hereinafter referred to as the “SEC”) has commenced the civil proceeding against Terraform Labs PTE. Ltd. and Do Hyeong Kwon by filing a complaint (as amended) in the United States District Court – Southern District of New York. The SEC’s amended complaint alleges a series of conduct by Terraform Labs PTE. Ltd. and Do Hyeong Kwon in relation to crypto asset securities. It is alleged that Terraform Labs PTE. Ltd. and Do Hyeong Kwon offered and sold an inter-connected suite of crypto asset securities, some of which purportedly constituted unregistered transactions and included transactions in mAssets purported security based swaps based on crypto assets that mirrored the price of stocks of US companies, and Terra USD (UST). The SEC also alleges that Terraform Labs PTE. Ltd. and Do Hyeong Kwon made false representations in relation to a Korean payment system to encourage purchases of two tokens used on the Terra blockchain – LUNA and UST. Further, that they falsely represented the stability of the UST stablecoin that led to the May 2021 Depeg and the loss of \$40billion of market value including devastating losses for the US retail and institutional investors. The SEC’s allegations are denied and Terraform Labs PTE. Ltd. and Do Hyeong Kwon seek to obtain information in the form of documents that are relevant to the defences raised in the civil proceeding. The requested information is specified in “**Attachment A**” appended to the request.

[5] Paragraph 4 of the request states that –

“The Requesting Judicial Authority would greatly appreciate a response to the Request for International Judicial Assistance as soon as is practicable to ensure that evidence is received in a timely manner for use in the civil proceeding described below.

This request is urgent as there is expedited discovery in the civil proceedings because this matter has an anticipated trial date in the fall of 2023, with the disclosure of expert reports due by September 7, 2023, in addition to document discovery and depositions required to be completed on 13 October 2023, without the possibility of an extension.

....”

(emphasis added)

Evidence

[6] Summons was issued on “MEK Global Ltd. aka KuCoin” at its last known registered office address as provided in the request. Mr. Neil Puresh, the Managing Director of Vistra Seychelles Limited, the last known registered agent of MEK Global Ltd., appeared in answer to the summons and informed that Vistra Seychelles Limited has resigned as the registered agent of Mek Global Ltd. effective on 19 June 2023. Vistra Seychelles Limited’s resignation is confirmed by their letter dated 8th June 2023 to the Financial Services Authority (hereinafter referred to as “FSA”) and the FSA’s letter to Mek Global Ltd. dated 19 June 2023 produced in evidence [Exhibits 1 and 2].

[7] According to the witness, Vistra Seychelles Limited is not the registered agent of “KuCoin” and they are not privy to the details of the said company.

[8] The witness also informed that despite resignation as the registered agent, Vistra Seychelles Limited forwarded a copy of the request to Mek Global Ltd. Further, Vistra Seychelles Limited do not have the requested documents.

Law and Analysis

The Evidence Convention

[9] The Evidence Convention was concluded on 18 March 1970 and entered into force on 7 October 1972¹ to facilitate co-operation between convention states for the taking of evidence abroad in civil and commercial matters. Both the United States of America and the Republic of Seychelles are contracting parties to the Evidence Convention. The convention entered into force between Seychelles and the United states of America on 10-V-2004.²

[10] Pursuant to Article 23 of the Evidence Convention, Seychelles declared that it will not execute letters of request issued for the purpose of obtaining pre-trial discovery documents as known in common law countries.³

The Seychelles' Constitution

[11] Article 64(4) and (5) of our Constitution stipulate as follows –

“(4) A treaty, agreement or convention in respect of international relations which is to be or is executed by or under the authority of the President shall not bind the Republic unless it is ratified by –

(a) an Act; or

(b) a resolution passed by the votes of a majority of the members of the National Assembly.

(5) Clause (4) shall not apply where a written law confers upon the President the authority to execute or authorise the execution of any treaty, agreement or convention.”

(emphasis added)

¹<https://www.hcch.net/en/instruments/conventions/full-text/?cid=82>

²<https://www.hcch.net/en/instruments/conventions/status-table/acceptances/?mid=782>

³<https://www.hcch.net/en/instruments/conventions/status-table/notifications/?csid=782&disp=resdn>; Articles: 23
“(…) that it wishes to declare, in accordance with article 35 clause c) and pursuant to article 23, first paragraph of the Convention, that the Republic of Seychelles will not execute Letters of Request issued for the purpose of obtaining pre-trial discovery of documents as known in Common Law countries.”

- [12] I read from Article 64(4) of our Constitution that a treaty or international convention shall bind the Republic in two ways. One, if it is ratified by an Act. Two, if a resolution is passed by a majority of the votes of the members of the National Assembly.
- [13] It is a fact that the National Assembly has not passed any Act in respect of the Evidence Convention. Generally, the Seychelles Courts have interpreted the absence of an implementing legislation to mean that a treaty or an international convention do not form part of our domestic law and is therefore unenforceable.
- [14] In *the matter of a letter of Rogatory issued by the United States District Court Eastern District of New York (2003) SLR 99* the Supreme Court held that it had no jurisdiction to execute a request for the taking of sworn evidence in Seychelles to be used in civil proceedings in the United States. At the time, only the United States of America was a contracting party to the Evidence Convention. The Supreme Court went on to observe that while requests for assistance in criminal matters from commonwealth jurisdictions and applicable foreign countries are governed by the Mutual Assistance in Criminal Matters Act there was no corresponding domestic law in respect of request for international assistance in civil matters. Thus section 11 of the Evidence Act is of purely domestic application.
- [15] Nevertheless, as a contracting state, Seychelles is obliged to perform its obligations under the Evidence Convention in relation to those convention states that have recognised its accession to the said convention, subject of course to any reservation and/or declaration made. I am therefore of the view that since the Evidence Convention is in force between the Seychelles and the United States of America this Court has the jurisdiction to execute the request subject to any reservation and/or declaration made.
- [16] In the Seychelles context, it has been declared that the Republic will not be bound to provide assistance in obtaining pre-trial discovery evidence. ⁴Therefore, although the Evidence Convention is applicable, the present request would fall under the Seychelles' declaration under Article 23 as it is in the nature of pre-trial discovery.

⁴ Article 23 (supra)

[17] At any rate, summons was issued on MEK Global Ltd. and the evidence show that the requested information or documents are not available at its last registered office address and last own registered agent in Seychelles.

Conclusion

[18] Based on the above facts and having regard to the Seychelles' declaration under Article 23 of the Evidence Convention, there is nothing further that the Supreme Court can do to execute the request.

[19] A copy of this ruling is to be served to the Ministry of Foreign Affairs and Tourism for the purpose of informing the requesting authority of the outcome of the request.

Signed, dated and delivered at Palais de Justice, Ile du Port Mahe on this 30th day of November 2023.

A. Madeleine, J