

Hausfeld & Co LLP (Hausfeld & Co LLP)
12 Gough Square London , EC4A 3DW
Recognised body
513826

[Agreement Date: 3 March 2022](#)

Decision - Agreement

Outcome: Regulatory settlement agreement

Outcome date: 3 March 2022

Published date: 4 April 2022

Firm details

No detail provided:

Outcome details

This outcome was reached by agreement.

Decision details

Agreed outcome

1. Hausfeld & Co LLP, 12 Gough Square, London, EC4A 3DW ('the Firm') agrees to the following outcome of the investigation into its professional conduct by the Solicitors Regulation Authority ('SRA')
2. The Firm will:
 - a. accept a rebuke;
 - b. agree to publication of this agreement; and
 - c. pay the SRA's costs of £10,897.50: comprising SRA's internal costs of £337.50 and external legal costs of £8,800 plus VAT of £1,760.

Reasons

3. The SRA's investigation concerned the conduct of the Firm in the case of Bao Xiang International Garment Centre and others v British Airways Plc and others [2015] EWHC 3071 (Ch) ('the Proceedings'). The Firm was retained by the China Chamber of International Commerce ('CCOIC') and commenced proceedings on behalf of CCOIC's members (64,697 Chinese companies who were members of CCOIC) ('the Claimants') against British Airways. The Claimants were seeking damages following a circa €800m



fine handed down by the European Commission in relation to an air freight price fixing cartel. The Firm considered that it had authority to issue the claim in the names of the relevant members following instructions from CCOIC, whom the Firm had been advised had authority to file legal proceedings in the names of its members. Hausfeld principally received instructions via CCOIC's agent, CAR International Ltd ('CAR'), a US-based asset recovery firm; which was appointed as agent by CCOIC in respect of the Proceedings and instructed the Firm on behalf of CCOIC, and whom the Firm considered to be experienced in cartel cases.

4. The claim was issued on 8 May 2014 and the Particulars of Claim served on 8 September 2014. The Defendant and potential Part 20 Defendants made strike out applications which were heard on 15 October 2015 and were successful. The High Court Judge who heard the strike out application made a number of criticisms of the Firm. These criticisms were the subject of the SRA's investigation.

5. In the course of its investigation the SRA has been provided with documents that were not considered by the High Court. This is, in part, because the SRA has the power to see privileged documents which were not seen by the High Court.

Background and steps taken prior to the Proceedings being issued

6. CCOIC is the part of the Commercial Legal Service Centre of the China Council for the Promotion of International Trade ("CCPIT") that deals with CCPIT's foreign trade promotion and protection functions. CCPIT is a national non-governmental organisation which is supervised by the State Council of the People's Republic of China.

7. The Firm first discussed the claims with CCOIC in late 2011. CCOIC passed on details and data from those of its members who had expressed an interest in pursuing damages claims for losses resulting from the air freight price fixing cartel. A number of CCOIC's members who met the Firm's criteria for joining the proceedings which had already been issued, Emerald Supplies Limited v British Airways Plc ('the Emerald proceedings') joined those proceedings in around May 2013. Once these companies had joined the Emerald proceedings, CCOIC continued to discuss with the Firm how other members could seek to recover damages for any losses they had suffered arising out of the cartel. By that time the US Courts had accepted that China Air Transport Association ('CATA'), also supported by CAR, could assist its members in the US air cargo proceedings and the issue was raised whether CCOIC could assist its members in a claim.

8. Prior to CCOIC instructing the Firm to issue the Proceedings:-

8.1. From 2012 onwards, CCOIC had provided information to its members about their potential claims for losses resulting from the cartel (via,

amongst other things, its branches and notices posted on its website) including what kinds of criteria these companies needed to satisfy to bring a claim for damages arising from the air freight cartel.

8.2. The Firm met with and provided advice to CCOIC in relation to adverse costs and confirmation was provided to CCOIC that the funding arrangements put in place would mean that neither CCOIC nor its members would be at risk of paying adverse costs if the claim was unsuccessful.

9. Prior to issuing the Proceedings the Firm:

9.1 obtained a written opinion from an expert on Chinese law that opined that CCOIC had the authority to commence legal proceedings on behalf of and for the benefit of its members and that CCOIC's decision that it would instruct the Firm to issue proceedings on behalf of CCOIC's members was taken in accordance with CCOIC's amended Articles of Association and that CCOIC was lawfully authorised to pursue the claims in the UK ('the Chinese Law Advice'). The Firm did not seek a second confirmatory Chinese law opinion on the novel issue of whether CCOIC had the authority to commence legal proceedings for the benefit of its members rather than rely on the Chinese Law Advice alone;

9.2 took specialist advice from senior English counsel and followed that advice in issuing the proceedings. However, the Firm did not obtain full written advice on which law was applicable in relation to the issues of the capacity and authority of CCOIC to act on behalf of its members in bringing proceedings in their names, as well as what exactly was required / permissible as a matter of English law;

9.3 having been provided with a copy of the amended Articles of Association (which the Firm had advised needed to be amended prior to the claim being issued and had understood were effective at the time of issue) did not confirm prior to issue that the amended Articles of Association relied on in the Chinese Law Advice had actually been executed / ratified;

9.4 informed CCOIC through its agent CAR, of the importance of identifying valid claimants who had made purchases of air freight services given the need to sign a statement of truth on both the Claim Form and Particulars of Claim;

9.5 asked for checks to be made by CCOIC (with the assistance of its agent CAR) to establish whether or not the list of members CCOIC had provided, which was then sent on to the Firm by CAR, had shipped goods by air in the relevant period and received confirmation from CAR on behalf of CCOIC (in its capacity as CCOIC's agent) that they had. However, the Firm did not make adequate enquiry as to what steps CCOIC had taken to identify that the list of members provided had shipped goods by air in the relevant period and relied on CCOIC (through

its agent CAR) to verify the validity of the Claimants' claims prior to the issue of the Proceedings to protect the Claimants' position prior to a limitation deadline.

10. Prior to service of the proceedings, the Firm did not make adequate enquiry as to what steps CCOIC had taken to verify the validity of the Claimant's claims.

Steps taken following the strike out application

11. Following receipt of the strike out application, the Firm, at a meeting in Beijing, asked CCOIC how it had determined which members used air freight services when the list of members was provided to the Firm prior to issue of the Proceedings. CCOIC's response was that the list was a 'random selection' of members who had applied for a certificate of origin based on certain criteria and that CCOIC had compiled the list by 'searching the target companies in our computer database with the search criteria of exporting goods that might be shipped by air, such as clothing, electronic products, etc.'. Following further interrogation of its database records later in March 2015, CCOIC discovered that other columns of data were available which would allow CCOIC to identify definitively which of its members had purchased air freight services as opposed to other types of freight services.

12. The Firm subsequently obtained further advice from two additional Chinese law experts together with further advice from English counsel with experience of working in China and Chinese law and, following and in reliance upon that advice, the Firm informed the Defendants that only those Claimants who had provided express ratification would continue to pursue their claims. As at the date the strike out application was heard, 362 of the original 64,697 Claimants had provided signed express ratification forms, of whom Hausfeld understands 5,277 Claimants applied for COOs for the export of Chinese goods by air during the cartel period.

Documents not considered by the High Court

13. In the course of its investigation the SRA has been provided with documents that were not provided to or considered by the High Court, due to the fact that the SRA has powers to see privileged documents that were not seen by the High Court. The material documents seen by the SRA that were not seen by the High Court are listed in a confidential appendix to this agreement.

Admissions

14. The Firm makes the following admission which the SRA accepts.

15. Prior to issuing the Proceedings in the names of the Claimants or in the period following issue of the claim and prior to service, the Firm:

15.1 allowed its independence to be compromised by relying on CAR/ CCOIC to verify which Claimants had made qualifying purchases;

15.2 did not make adequate enquiry as to what steps CCOIC had taken to identify that the list of members it (CCOIC) had provided to the Firm had shipped goods by air in the relevant period (i.e. did not carry out the investigations it later did at a much earlier date);

15.3 did not obtain full written advice on which law was applicable in relation to the issues of the capacity and authority of CCOIC to bring proceedings in the names and for the benefit of its members;

15.4 did not ensure that the amended Articles of Association had actually been executed/ ratified.

Why this outcome is appropriate

Regulatory Outcome

16. The SRA considers that a rebuke is appropriate because the conditions in Rule 3.1. of the SRA Disciplinary Procedure Rules 2019 are met in that:

16.1 the conduct was related to a failure to ascertain, recognise or comply with the Firm's professional or regulatory obligations and affected or had the potential to affect a substantial, high-value or high-profile matter;

16.2 a written rebuke is a proportionate outcome in the public interest;

16.3 the conduct was neither trivial nor justifiably inadvertent.

17. In deciding that a rebuke is proportionate, the SRA has taken account of the following:

17.1 the SRA has been provided with documents that were not considered by the High Court;

17.2 whilst the conduct is serious and does require some public sanction to uphold confidence in the delivery of legal services, it does not involve dishonesty or lack of integrity;

17.3 there were no adverse financial consequences for the Claimants and no costs order was made against the Firm;

17.4 the likelihood of repetition of such misconduct is low given that the Firm has (i) instituted a requirement to seek at least two legal opinions on a question of foreign law on issues of authority and / or which are vital to the validity of the claim in non-European or non-US jurisdictions with which the Firm is not familiar and; (ii) confirmed that it has now ensured

that steps are taken to verify that only Claimants with valid claims are included, as far as reasonably practicable, prior to issue of proceedings.

18. The SRA considers it appropriate that this agreement is published in the interests of transparency in the regulatory and disciplinary process.

Acting in a way which is inconsistent with this agreement

19. The Firm agrees that it will not act in any way inconsistent with this agreement by, for example, denying the admissions made in this agreement. The Firm agrees that if it acts in any way inconsistent with this agreement it accepts that the issues that are the subject of this Regulatory Settlement Agreement may be referred back to the SRA for consideration or referral of its conduct to the Solicitors Disciplinary Tribunal and also on the basis that such failure to comply with this agreement may constitute a breach of Principles 2 and 5 of the SRA Principles 2019 and Paragraph 3.2 of the Code of Conduct for Firms.
Costs

20. The Firm agrees to pay the costs of the SRA's investigation in the sum of £10,897.50 (inclusive of VAT). Such costs are due within 28 days of receipt of an invoice for costs from the SRA.

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