

# Electronic Transactions and Digital Platforms – When are Parties Bound by Terms?

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## Introduction

Commercial contracts are commonly executed in an electronic format. Businesses are also increasingly adopting digital platforms to manage their commercial relationships, with the contract lifecycle consolidated on a single platform. While such digital solutions enhance efficiency and risk management, they also raise certain legal issues, such as the identity of contractual parties and the applicability of terms and conditions.

This was the case in the People's Republic of China ("**PRC**") Supreme Court Civil Petition No. 1126 and Supreme Court Civil Petition No. 334. The disputes arose from similar facts, in which one of the Respondent companies, acting as a buyer's agent, had adopted a digital platform for commercial transactions. The vendor of a transaction would register an account on the platform and sign a digital sale and purchase agreement with the buyer and the buyer's agent. The agreement specified arbitration in Singapore or Hong Kong for the resolution of disputes, as well as the applicability of Singapore law.

In these cases, the Appellant companies had conducted negotiations via email with the Respondents, and subsequently executed the contracts on the Respondents' digital platform using the accounts of their parent companies. The Appellants argued that the contracts were concluded on email and not on the digital platform, and that they were thus not bound by the arbitration clauses.

The PRC Supreme Court found in favour of the Respondents, holding that the transactions were conducted on the digital platform, and not via email. The Appellants were thus bound by the arbitration clauses.

Rebecca Chew and Tan Tian Hui of Rajah & Tann Singapore LLP rendered expert Singapore Law Opinions to the successful Respondents, which were tendered to the PRC Courts. The views expressed in the expert Singapore Law Opinions were accepted by the PRC Courts. Mr Alvin Xiao, Mr Sun Yaxiang and Ms Elaine Jiang of Fangda Partners successfully represented the Respondents in this matter.

## Brief Facts

The Respondents in these cases were part of the Li & Fung Group. Of these subsidiaries, LFT and LFC ("**Buyer's Agent**") provided buyer's agent services to offshore buyers. Since 2008, the Buyer's Agent had been using the LF Digital Platform developed by the Li & Fung Group, which operated as follows:

1. The Vendor of a transaction would have to register an account on the LF Digital Platform to sign a sale and purchase agreement with the Buyer and the Buyer's Agent.
2. Each order would result in a Placement Memorandum, Order, and Terms and Conditions (collectively, the "**Contract**").
3. The Placement Memoranda and Terms and Conditions would include an arbitration clause providing for the resolution of disputes by arbitration in Hong Kong or Singapore.

The Appellants in these matters were subsidiaries of the Vendors in their respective transactions. The relevant agreements followed similar patterns:

1. The Appellants would negotiate the details of the order with the Buyer's Agent via email.
2. The Buyer's Agent would upload a series of transaction documents to be signed on the LF Digital Platform, including the Contract, in accordance with the details communicated by e-mail. The Contract would state the names of the Buyer, the Buyer's Agent, and the Vendor, but not the Appellant.
3. The Appellants did not have registered accounts on the LF Digital Platform. An employee of each Appellant would log in to the LF Digital Platform through the account of its parent company (the respective Vendors in the transactions) and accept the Contract.

Disputes arose over the performance of the Contracts. In the course of resolution, the Appellants and Respondents argued over whether they were bound by the arbitration clauses in the Contracts. The Respondents submitted that the parties were bound by the arbitration clauses because the Contracts had been concluded on the LF Digital Platform. However, the Appellants argued that the agreements were concluded solely by email.

## Holding of the Court

The PRC Supreme Court affirmed the ruling of the High People's Court of Guangdong and found for the Respondents, holding that the Appellants were bound by the arbitration clauses in the Contracts.

The High People's Court of Guangdong had held that the Appellants were bound by the arbitration clauses in the Contracts. The High People's Court of Guangdong accepted, as persuasive authority, the Singapore High Court decision of *The Titan Unity* [2014] SGHCR 4 referred to in the expert Singapore Law Opinion adduced by the Respondents, which recognises that an arbitration agreement may extend to non-signatories if their agreement and/or acceptance has been implied by circumstances and conduct.

In affirming the decision of the High People's Court of Guangdong, the PRC Supreme Court made the following determinations regarding the actual structure of the transactions:

1. In each case, the Appellant was the actual seller and the Vendor in the Contract was the designated recipient of payment by the Respondents.
2. After producing the goods, the Appellant would ship the order, and the Appellant's staff would upload bills of lading, electronic invoices, and other materials to the LF Digital Platform, upon which the Vendor could receive payment.
3. The PRC Supreme Court rejected the contention that the LF Digital Platform's "Terms of Use" were actually signed by the Vendors and not the Appellants, as they were in fact signed by the Appellants' legal representatives.
4. Therefore, the transactions involved the formation and performance of contracts on the LF Digital Platform. The Appellants' contention that contracts of sale were concluded solely by email with the Buyer's Agent was untenable.

Accordingly, the transactions in question were conducted on the basis of the Sales Memoranda and the Terms and Conditions, which included the respective arbitration clauses. The PRC Supreme Court thus held that the Appellants were bound by the arbitration clauses.

## Concluding Words

The decisions of the PRC Supreme Court demonstrate the practical issues that may arise in the use of digital platforms in executing agreements. It is also encouraging that the PRC Courts are open to considering the position under Singapore law and were prepared to accept the views expressed in the expert Singapore Law Opinions. In any event, to avoid uncertainty, parties should ensure that in all agreements, whether in digital or physical form, all parties are duly recorded in writing, and that applicable terms are clearly incorporated.

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