

Second Circuit Decision May Lead to More Offshore M&A Litigation Filed in the United States

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On April 12, 2019, the United States Court of Appeals for the Second Circuit held that the district court abused its discretion by failing to consider a forum selection clause in a foreign issuer's Depositary Agreement, notwithstanding the fact that the issuer is a Cayman Islands company and the gravamen of the lawsuit concerned an alleged breach of fiduciary duty by the issuer's board of directors, which is an issue of Cayman law. This decision may encourage more shareholders to challenge offshore corporate transactions in U.S. courts.

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