Hogan Lovells

Arbitration Highlights in the Year of the Tiger

March 2022

As the world welcomes in the Year of the Tiger, we look back at seven recent decisions that made an impact in the past year.

In the decisions, the Hong Kong courts grappled with issues such as when winding-up petitions can be stayed to arbitration; whether compliance with preconditions to arbitration should be reviewed by the tribunal or the courts; and whether court proceedings should be stayed where the subject matter of the disputes cannot be found within the contracts containing the arbitration agreement.

Master of the rules

In *T v B (Arbitration)* [2022] 1 HKLRD 43005 the Hong Kong court confirmed that an arbitral tribunal is the "master of its own procedural rules" and that compliance with preconditions to arbitration goes to admissibility, not jurisdiction. The decision confirms that an arbitral tribunal's decision on admissibility cannot be reviewed by the courts.

T and B entered into "back to back" construction contracts for reclamation works. T alleged that B committed various breaches of the contract. The contract contained an arbitration agreement which provided for arbitration on the condition that a completion certificate had been issued.

T sought to refer the dispute to arbitration but B objected that the reference was premature because the completion certificate had not been issued. The parties and the tribunal referred to this objection as a "jurisdictional challenge". The arbitrator by an interim award ruled that he did not have jurisdiction to hear the substantive disputes on the basis that T's purported commencement of arbitration was premature.

T applied to set aside the award under section 81 of the Arbitration Ordinance (Cap. 609) on the basis that the arbitrator had only been appointed to determine the "jurisdictional challenge" and not to construe the relevant clause of the contract. Also, the clause was not valid in itself because it precluded the right to have disputes heard and determined within the statutory limitation period.

T brought court proceedings against B and B applied to have the proceedings stayed in favour of arbitration.

"..if the Court is the master of its own procedural rules, so should be the arbitral tribunal"

The Hong Kong Court of First Instance relied on the earlier judgment of *C v D* [2021] 3 HKLRD 1, in which the court had found that it must confine itself to true questions of jurisdiction. A "jurisdictional challenge" targets the power of the tribunal to hear a claim, whilst an "admissibility challenge" asks whether it is appropriate for the claim to be heard by the tribunal, despite it having power to do so.

A challenge concerning the timing of when to initiate arbitration is a question of admissibility, just as are other pre-arbitration conditions such as issuance of notices in advance.

The court agreed with the *C v D* approach. It made commercial sense, respected the parties' autonomy, and was in line with the general trend of facilitating the fair and speedy resolution of disputes by arbitration without unnecessary expense.

The court added that, if the court were the *"master of its own procedural rules, so should be the arbitral tribunal"*. A tribunal's decision on the parties' compliance or non-compliance with pre-arbitration procedures or conditions should be final and not open to review by the court.

The court found it was necessary for the arbitrator to construe the contract (and hence the arbitration agreement) so as to determine the jurisdictional challenge. A limitation defence did not necessarily accrue by virtue of the operation of the clause.

Key takeaways

- Compliance with preconditions to arbitration goes to admissibility and not jurisdiction.
- A party's compliance or non-compliance with pre-arbitration conditions will not be subject to review by the courts.

Centre of gravity

The court in *ZPMC-Red Box Energy Services Limited v Philip Jeffrey Adkins* [2021] HKCFI 3501 refused to stay court proceedings in favour of arbitration on the basis that the subject matter of the disputes was not to be found within the contracts containing the arbitration agreement.

The plaintiff (ZPMC) was a joint venture company involved in the business of chartering and sub-chartering ocean-going vessels for offshore and onshore oil and gas projects. The 1st defendant (D1) was a director and CEO of the plaintiff until his employment was terminated in February 2018. D1 controlled the second and third defendants (D2 and D3) through a corporate vehicle with a cross-shareholding structure. D3 was a shareholder of ZPMC and D2 provided it with consulting services.

In a series of inter-related contracts, there was a shareholders agreement (SHA) and consulting services service agreement (FSA), both of which contained an arbitration clause referring disputes to HKIAC arbitration. A separate CEO contract between ZPMC and D1 contained an exclusive jurisdiction clause in favour of the Hong Kong courts.

Disputes occurred amongst the parties with ZPMC claiming against D1 for breach of fiduciary duties, contractual duties and/or breach of trust, and against D2 and D3 for knowing receipt as constructive trustees in respect of payments supposedly ordered by D1. The defendants applied for a stay pending arbitration pursuant to section 20 of the Arbitration Ordinance.

The question before the court was whether the subject matter of the dispute fell within the arbitration agreements. The court found that the claims arising from D1's "*personal duties towards the Plaintiff do not fall within the Arbitration Agreements. [D1] is not a party to the SHA or FSA and hence either of the Arbitration Agreements. On the other hand, the CEO Contract does not contain an arbitration clause*".

It appeared to the court that the agreement at the "*centre of gravity*" of the present disputes was plainly the CEO contract which established D1's engagement as the CEO of ZEPC, with all the duties associated with the position.

The Court of First Instance observed that the parties appeared to have "made a deliberate choice of omitting an arbitration clause from the *CEO Contract*", which was to be contrasted with both the SHA and the FSA, "*which do contain references to arbitration but only in relation to a dispute, controversy or claim which arises out of or in connection with them*".

No "*sensible or rational business people*" would have intended the supposed breaches of duties to be determined in parallel proceedings governed by two inconsistent dispute resolution provisions.

Key takeaways

- Whilst Hong Kong sticks closely to the "one stop" presumption (that the parties generally will have intended all disputes arising out of the same subject matter to be decided by the same tribunal), this is not an absolute rule of thumb.
- Where the parties have entered into related contracts containing different dispute resolution mechanisms, the courts will consider what the parties really intended as sensible and rational business people.
- When negotiating separate but related contracts, careful thought should be given to whether it makes sense to include a single compatible dispute resolution clause in all of them so to resolve all disputes in a single proceeding. Under most arbitral rules, a single arbitration can be commenced under multiple contracts and multiple arbitrations can be consolidated into one arbitration. This would be efficient and economical.

Cheque-mate

In *T v W* [2022] HKCA 95, the Hong Kong Court of Appeal gave reasons for refusing a stay to arbitration a court action brought on a dishonoured cheque because of an arbitration clause in the underlying loan agreement between the parties.

The plaintiff agreed to lend HK$5 million to the defendant for one year by way of a written agreement dated 21 March 2017. Interest was to be payable each month at the rate of 2.5 per cent per month. The loan was to be repaid by way of post-dated cheque.

The loan was not repaid and the parties agreed to extend the repayment date. They subsequently agreed to extend the repayment date again with the principal being due in September 2019. The loan was still not repaid at that date and the parties entered into a supplemental agreement under which the loan was to be repaid in March 2020. When the sum remained unpaid, the plaintiff brought court proceedings to recover the debt which the defendant applied to stay to arbitration on the basis of a clause in the underlying loan agreement:

"*Matters not covered shall be dealt with through friendly negotiation. This loan agreement is subject to the laws of Hong Kong. In case of any disputes, they shall be dealt with through arbitration in Hong Kong*". (English translation)

The Court of Appeal agreed with the first instance decision of the Honourable Madam Justice Mimmie Chan that the post-dated cheque was a separate contract from the underlying loan agreement and that bills of exchange are generally regarded as the equivalent of cash. The Court of First Instance observed that the Court of Appeal in *CA Pacific Forex Ltd v Lei Kuen Ieong* [1999] 1 HKLRD 462, had held there must be a *"plain manifestation in the arbitration clause that it is to apply to bills of exchange if the presumption against taking bills of exchange into arbitration is to be rebutted"*.

The Court of First Instance had rejected the defendant's submission that the court should instead adopt the "*one-stop shop dispute resolution presumption"* following *Fiona Trust & Holding Corporation v Privalov* [2007] UKHL 40.

Construing the loan agreement as a whole, the Court of Appeal agreed with the Court of First Instance that the word "disputes" in the arbitration clause was to be construed to mean disputes relating to the loan agreement and the parties' claims and liabilities thereunder only. There was no sufficiently plain indication that the parties intended the arbitration clause to extend to claims under the cheque.

The Court of Appeal was unable to find that *CA Pacific Forex* was *"plainly wrong"* since in Hong Kong, the case had been preceded by at least two first instance decisions by experienced judges to like effect. *Fiona Trust* was not a case concerned with bills of exchange, to which a competing principle was also applicable. The approach in *CA Pacific Forex* had also been applied in Singapore, "*a jurisdiction that has adopted both the UNCITRAL Model Law and the* Fiona Trust *approach of presuming that all disputes between parties fall within the scope of the arbitration clause unless shown otherwise*".

Key takeaways

- There must be a plain manifestation in the arbitration clause that it is to apply to bills of exchange if the presumption against taking bills of exchange into arbitration is to be rebutted.

"there must be a plain manifestation in the arbitration clause that it is to apply to bills of exchange"

American built

In *Construction Co v Guarantor* [2021] HKCFI 2558, the Hong Kong Court of First Instance dismissed an application to set aside leave to enforce an arbitral award issued by the American Arbitration Association in Los Angeles.

The plaintiff carried on the business of general contracting and construction management in the USA. The plaintiff and a subsidiary of the defendant entered into a contract in July 2016 for construction of a project in Los Angeles.

The defendant issued a parent company guarantee in favour of the plaintiff, whereby the defendant guaranteed payment of sums of US$10 million, US$20 million and US$24.4 million according to a funding schedule. The plaintiff commenced the arbitration after the defendant defaulted on payment.

The defendant contended that the plaintiff was not validly licensed and so was prevented from relying on the guarantee as the underlying construction contract was unlawful or contravened public policy.

The sole arbitrator first determined that its jurisdiction was confined to the dispute in relation to the guarantee and that he did not have jurisdiction to decide on the illegality of the underlying contract. The sole arbitrator allowed the plaintiff's claims on the defendant's non-payment of more than US$38 million.

The U.S. Federal District Court later confirmed that the guarantee was valid under U.S. law and that the award was not contrary to U.S. public policy. The Hong Kong court subsequently gave leave to enforce the arbitral award.

The defendant applied for leave to enforce to be set aside on several grounds under section 89 of the Arbitration Ordinance, including the propositions that the award was not yet binding, the arbitration agreement was invalid, the defendant was unable to present its case during arbitration, and/or that it would be contrary to public policy to enforce the award.

The Hong Kong Court of First Instance noted that the parties had agreed on California law as the governing law of the guarantee, had submitted their disputes to arbitration in accordance with the relevant rules under the American Arbitration Association, and had submitted to the supervisory jurisdiction of the U.S. court at the seat of the arbitration. The court therefore had no choice but to give due weight to the decision of the U.S. Federal District Court as the supervisory court, which dismissed the defendant's motion to vacate the award.

The court dismissed the defendant's allegation that it had been unable to present its case during the arbitration. The sole arbitrator's refusal to deal with the illegality of the underlying construction contract was within the scope of his jurisdiction.

The court held that none of the grounds under section 89 to prevent enforcement of the award had been met. It was impossible for the court to find on the available evidence that the underlying construction contract or the arbitration agreement contained therein was illegal, and/or that it would be contrary to public policy to enforce the award. There was nothing contrary to the court's conscience or its fundamental conceptions of morality or justice to permit enforcement.

Key takeaways

- Parties have the right to challenge the enforcement of foreign arbitral awards before the Hong Kong courts, so long as one or more grounds under section 89 of the Arbitration Ordinance are met. Those grounds are exhaustive.
- The burden is on the applicant for the setting aside application to prove the existence of the grounds set out under section 89 of the Arbitration Ordinance.
- That being said, the Hong Kong courts have to give due weight to the decision of the supervisory court when it decides on the issues of the validity of the contract or on the procedure of the arbitration.
- It would be generally inappropriate for the enforcement court of a New York Convention country, to reach a different conclusion on the same question of asserted procedural defects as that reached by the court of the seat of arbitration. The court endorsed and applied the observation made by Colman J in the English decision of *Minmetals Germany GmbH v Ferco Steel Ltd* [1999] 1 All ER (Comm) 315 at 311 as to the weight to be given to the views of the supervising court of the seat of the arbitration.
- As the Hong Kong courts generally adopt a pro-arbitration stance, it is generally very hard to "overturn" the decision of the supervisory court on the same grounds before the enforcing court when enforcing an arbitral award in Hong Kong (see for example *Gao Haiyan v Keeneye Holdings Ltd* [2012] 1 HKLRD 627).

"... the enforcement court has to give due weight to the decision of the supervisory court"

- This is sound policy. Prior decisions on annulment or enforcement can, and should, be treated with deference, at least to the extent that they involve identical issues or arguments. This perspective is in line with the New York Convention and users' expectations when choosing arbitration as an efficient means to resolve their disputes in a final and binding manner.
- Interestingly, the Hong Kong court in *Construction Co v Guarantor* did not decide on the basis of issue estoppel. The Australian courts in *Gujarat NRE Coke Limited v Coeclerici Asia (Pte) Ltd [2013] FCAFC* 109 also declined to determine whether issue estoppel operated in the context of an English annulment court's prior rejection of an applicant's due process objection being raised again in enforcement proceedings. Even without applying issue estoppel, the Australian courts deferred to the English court's earlier decision, reasoning that it would "generally be inappropriate" to reach a different conclusion on the same question as that reached by the court of the seat of arbitration.
- The Hong Kong courts have also not applied issue estoppel in the context of enforcement where the grounds were rejected before a supervisory court. However, that is not the end of the matter. As pointed out in *Gao Haiyan v Keeneye Holdings Ltd*, due weight must be given to the decision of the supervisory court refusing to set aside an award.

Beyond the scope

The Hong Kong Court of First Instance in *Arjowiggins HKK2 Ltd v X Co* [2022] HKCFI 128, decided to set aside an arbitral award issued by a tribunal consisting of three arbitrators under the HKIAC Rules.

The Court of First Instance ruled that the award was beyond the scope of what the parties pleaded in the arbitration and clarified that the courts will not hesitate to set aside arbitral awards which fall outside the scope of the parties' pleadings, and reiterated that arbitral tribunals should keep in mind not to decide or formulate any relief that is not within the pleadings.

Background

The parties, Arjowiggins HKK2 Ltd (the applicant) and X Co (the respondent) entered into a joint venture agreement in 2005. The relationship between the parties broke down and in 2010 the respondent applied to the mainland court for a judicial dissolution of the JV company.

The applicant then commenced arbitration proceedings in Hong Kong in October 2012, alleging breach of the JV contract by the respondent. A damages award in favour of the applicant was issued in 2015.

The mainland court ordered the dissolution of the JV Company in 2013 and the formation of a liquidation committee the following year. The respondent subsequently commenced an arbitration at the HKIAC against the applicant in 2018 (the HKIAC arbitration). The mainland court ordered the formation of a compulsory liquidation group (CLG) upon the respondent's application whilst the HKIAC arbitration was ongoing.

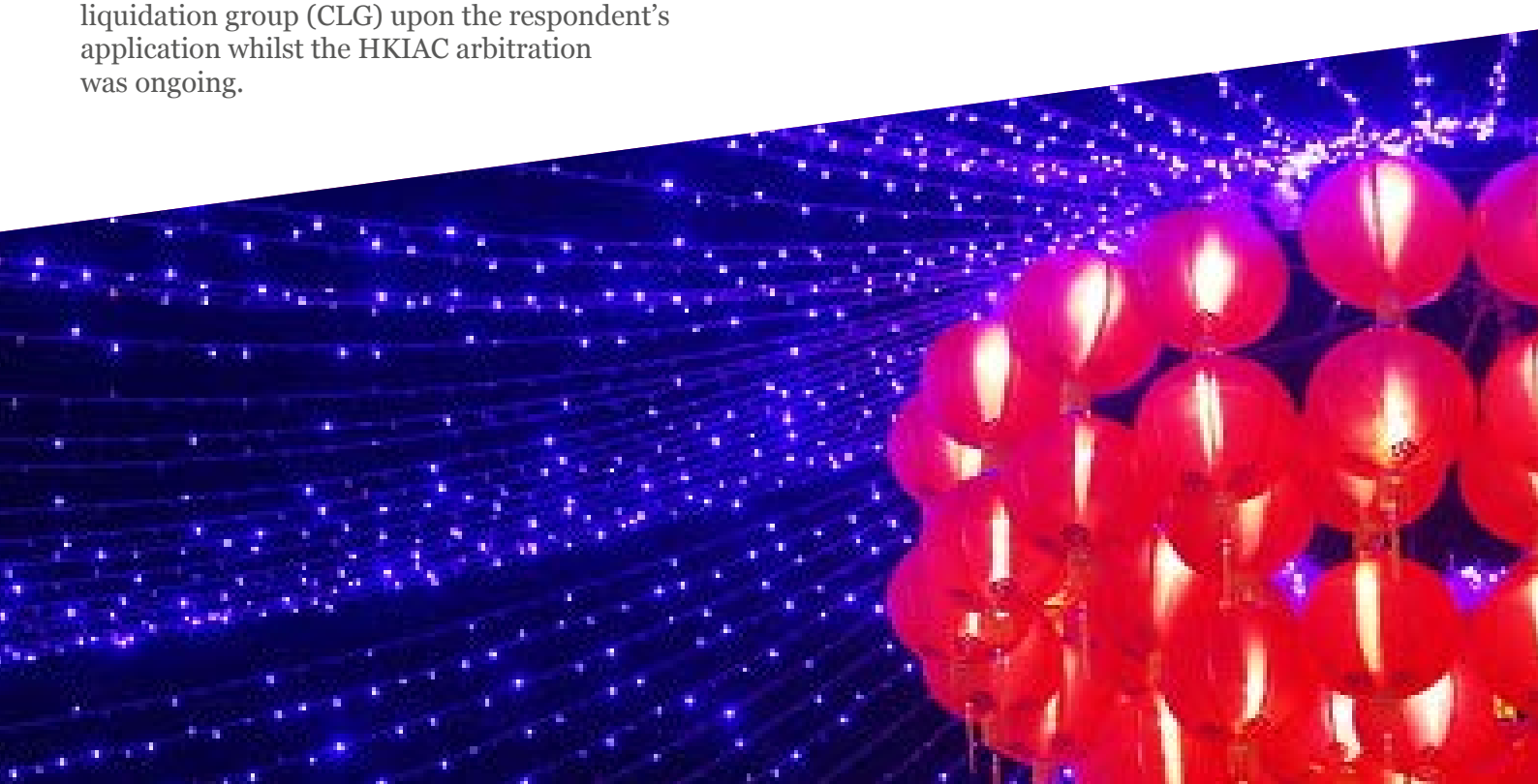
Key issues

The key issue related to the pleadings in the HKIAC arbitration. The respondent claimed that the applicant had possession, custody or control over account books and other documents of the JV company and sought an order for return of these documents as well as an order for examination of the documents.

The tribunal consisted of three eminent and experienced arbitrators. After the hearing in December 2019, the tribunal handed down a partial award, finding that the applicant had possession, custody or control over the documents and that the respondent did not have such right. The tribunal found however that CLG did have the right.

The applicant submitted that the tribunal had no powers to make further orders other than dismissing the respondent's claim in the arbitration, and that since CLG did not exist when the arbitration was commenced, the tribunal "*only had jurisdiction to decide those matters referred to in the Notice of Arbitration*".

In the final award issued in August 2020, the tribunal ordered that the documents should be delivered up to CLG even though the remedy had never been sought or pleaded by the respondent.



The court's decision

The applicant applied to the Court of First Instance to have the award set aside pursuant to section 81(1) of the Arbitration Ordinance based on two grounds: (i) the awards handed down were outside the scope of the submission to arbitration; and (ii) the awards were against public policy.

On the first ground, the court agreed that delivery of the documents to CLG was inconsistent with the pleadings in the HKIAC arbitration. In particular, the respondent had never pleaded that the applicant was in breach of the JV contract by failing to assist in the liquidation of the JV company or that it should have delivered up the documents to parties other than the respondent.

The court reiterated that it is trite law that "the pleadings, and not the evidence, dictate the proper course of the proceedings and the ambit of the orders to be made". The court also emphasized that there is a difference between a tribunal's jurisdiction to decide on matters in an arbitration agreement and whether an issue was within scope of a dispute. In this case, the applicant's duty to facilitate the JV company's liquidation, hence resulting in the order of delivering the documents to CLG, was never pleaded and there was insufficient evidence for the tribunal to decide on the matter.

Furthermore, referring to the Court of Appeal's decision in *Choi Yuk Ning v Ng Kwok Chuen* [2019] HKCA 171, the Court of First Instance remarked that *"trial by ambush has no place in modern litigation"* which included *"advancing new legal consequences in opening submissions"*, as it would be unfair to the counterparty.

On the second ground, the applicant claimed that the tribunal should not have ordered delivery of the JV documents to the CLG before receiving further evidence and that consequently, the enforcement of the award would be contrary to public policy. The court further opined that the real substance of the applicant's claim on the public policy ground was that it had not been given a reasonable opportunity to present its case and to file further evidence, as a result of the tribunal acting beyond the scope of the parties' reference to the 2018 arbitration. The court found that the evidence presented by the applicant was insufficient.

The court set aside the award.

Key takeaways

- This is a positive decision by the Hong Kong courts which act as a safeguard to the arbitral proceedings to ensure their integrity. The tribunal should only rule on claims and reliefs pleaded.
- Parties should formulate their claims and issues well before they are pleaded and should not rely on the tribunal's jurisdiction and power to change the scope of the proceedings.
- Parties in an arbitration should *"know in advance, before the hearing of the arbitration, and in as full an extent as possible, the pertinent claims and remedies sought by the other side"*.
- This enables the parties to consider all possible defences, and to decide on the full extent of what evidence should be adduced, rather than to have new issues raised with the witnesses only when they are called.

Educational lesson

The Hong Kong court stayed a petition presented on the just and equitable ground to arbitration, on the basis of arbitration agreements found within what the petitioner described as quasi-partnership agreements formed in 2007. The dispute concerned an online educational publishing business based in the mainland.

The court in *China Europe International Business School v Chengwei Evergeen Capital LP* [2021] HKCFI 3513 found that the substance of the disputes fell within the arbitration agreements and rejected the petitioner's argument that the issues in the petition affected third parties who were not parties to the arbitration agreements.

The court also dismissed claims that the appointed arbitrator lacked the requisite qualifications and experience and that a stay would lead to further costs and duplication of resources.

"trial by ambush has no place in modern litigation"

Background

The petitioner, China Europe International Business School (China Europe), was established in 1984 as a non-profit making joint venture under an agreement made between the PRC government and the European Commission.

In 2006, China Europe intended to launch a publishing business in the mainland to cater to the growing needs of business executives for state-of-the-art management concepts and skills. The parties entered into a memorandum of understanding to set up a joint venture company that was followed by a suite of agreements dated 3 May 2007 between China Europe, the JV company and the first to third respondents (R1-R3), which were companies incorporated in the Cayman Islands. The agreements all contained an identical or substantially similar arbitration clause.

China Europe sought to wind up the 7th respondent in the action, CEIBS Publishing Group Ltd (the company) on the just and equitable ground under section 177(1)(f) of the Companies (Winding Up and Miscellaneous Provisions) Ordinance, claiming that the company was in effect a quasi-partnership between China Europe and R1-R3 which had acted in breach of the agreements and the "*common understandings*" regarding share ownership and control that were said to exist between the parties.

The company applied for an order to stay the petition claiming that the substance of the disputes in the petition fell within the ambit of the a rbitration agreements.

Applicable principles

The Court of First Instance observed that Hong Kong was a pro-arbitration jurisdiction and added that in most legal systems, arbitration clauses in corporate or partnership documents are valid and enforceable. Although winding up proceedings do not fall within the scope of section 20 of the Arbitration Ordinance on the basis they are not an action, the court had inherent jurisdiction to grant a stay on a petition presented on the just and equitable ground in favour of arbitration.

Whilst it was correct that in general, a company should not take an active role in a dispute between shareholders, the court did not have to take a "blinkered approach" and reject any application made by the company in a petition on the just and equitable ground. It was also not correct to say that the company had no interest in the petition.

The court was of the view that the substance of the disputes in the petition fell within the scope of the arbitration agreements for several reasons.

Until the incorporation of the company, there was no prior relationship or dealings between the petitioner and R1-R3 which was necessary for the court to find there was "something more" beyond what the shareholders had agreed in the 2007 agreements. The point was fundamental because *"in considering a petition on the just and equitable or unfair prejudice ground, the starting point is that shareholders are required to act in accordance with the contractual bargains, and the burden is on the petitioner to satisfy the court that there is 'something more' beyond what the parties agreed to in contract"*.

In the court's view, the arbitration agreements were wide enough to cover the disputes over the existence and effect of the common understandings regarding share ownership and control as they were plainly disputes "relating to" the agreements. It followed that the disputes should be determined in arbitration unless the plaintiff could discharge the burden of satisfying the court as to why it should be allowed to pursue the petition.

In this regard, the court dismissed the plaintiff's claims that the issues in the petition affected third parties who were not parties to the arbitration agreements and rejected the idea that a stay would necessitate further costs and expenses and lead to duplication of resources. The court also rejected claims that the sole arbitrator was not qualified to hear the dispute.

Key takeaways

- The decision is not the first time a Hong Kong court has stayed a petition to wind up a solvent company under the just and equitable ground.
- That occurred in *Re Quiksilver Glorious Sun JV Ltd* [2014] 4 HKLRD 759, which was cited in China Europe, and in which the court observed that winding-up proceedings were not an "action". However, the *Quiksilver* case marked the first time a Hong Kong court stayed a petition to wind up a solvent company so that an underlying shareholder joint venture dispute arising from a China joint venture could be resolved in accordance with an arbitration agreement between the shareholders.
- Where petitions are presented on other grounds than on the just and equitable ground, the Hong Kong court may use its discretion to refuse an application for a stay.
- The general pro-arbitration stance of the Hong Kong courts means that the courts will generally try to ensure that the parties' contractual bargain will be realised where the parties have clearly opted for arbitration as their preferred means of dispute resolution.

All eyes on enforcement proceedings

The Hong Kong Court of First Instance has clarified its approach in relation to challenges to awards made because a party was allegedly "*unable to present* [its] *case*" adequately during the arbitral proceedings.

In *Firm H v W* [2021] HKEC 5281, the Hong Kong court ordered the applicant to the set-aside proceedings to provide security to the respondent in the total sum of HK1.8 million, accounting for the sum awarded in the arbitration and the respondent's costs in the court proceedings.

The dispute originated between a solicitors firm in Hong Kong and one of its clients (W), concerning unpaid legal fees. The firm prevailed in an arbitration, with an award dated 14 February 2020 ordering W to pay it a sum of HK681,138.20 plus interests and costs. The firm obtained leave before the court to enforce the award, but W applied to set the award aside and also to set aside the leave to enforce granted by the court. The firm applied for security against W.

In its decision, the court laid out the two main factors which are to be considered when deciding an application for security pursuant to Order 73 r 10(A) of the Rules of the High Court: (i) the strength of the substantive challenge made against the award "*as perceived by the court on a brief consideration*"; and (ii) the ease or difficulty of enforcement of the award, including potential additional risks to enforcement induced by delay.

As to the first, the court considered the basis of W's challenge to the award, that due to his health condition at the time of the arbitration, he was allegedly "*unable to present* [his] *case*", one of the grounds for the refusal for enforcement in section 86 Hong Kong Arbitration Ordinance.

In this respect, the court said it should not concern itself with the merits of the dispute in any way, but only with the structural integrity of the arbitral proceedings. The challenging party has to show that it has been denied due process, and the conduct it is complaining of is serious, or even egregious.

The court also reiterated the finding it had first made in *Grand Pacific Holdings Ltd v Pacific China Holdings Ltd (in liq) (No 1)* [2012] 4 HKLRD 1, that even where such egregious conduct and lack of due process is shown, the court may at its discretion decide not to set aside an award if it is satisfied that the outcome could not have been different.

The court found W's substantive arguments to be unconvincing. Whilst W showed that over the course of the arbitration he underwent several eye surgeries, this alone was considered insufficient for the court to order that the award be set aside. W had failed to show how that health condition prevented him from adequately instructing counsel or making representations during the arbitration. In any event, the court held that the outcome of the dispute could not plausibly have been different, as it was a straightforward issue of unpaid legal fees; in light of that, had W succeeded in showing lack of due process, the court held that his challenge might nonetheless have been rejected in the court's discretion.

Addressing the second question, the court found that it was appropriate that security for costs be granted to the firm, in consideration of W's residing outside of the jurisdiction of Hong Kong, thereby making enforcement more complex.

Key takeaways

- When deciding on challenges made against awards on the grounds that a party has been unable to present its case, courts in Hong Kong will only consider the structural integrity of the arbitral process.
- The relevant party has to show that it has been denied due process, and the conduct complained of must be serious, even egregious, for the challenge to succeed.
- A Hong Kong court will have discretion not to set aside the award if it is satisfied that in any event, the outcome of the arbitration would not have been different.

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