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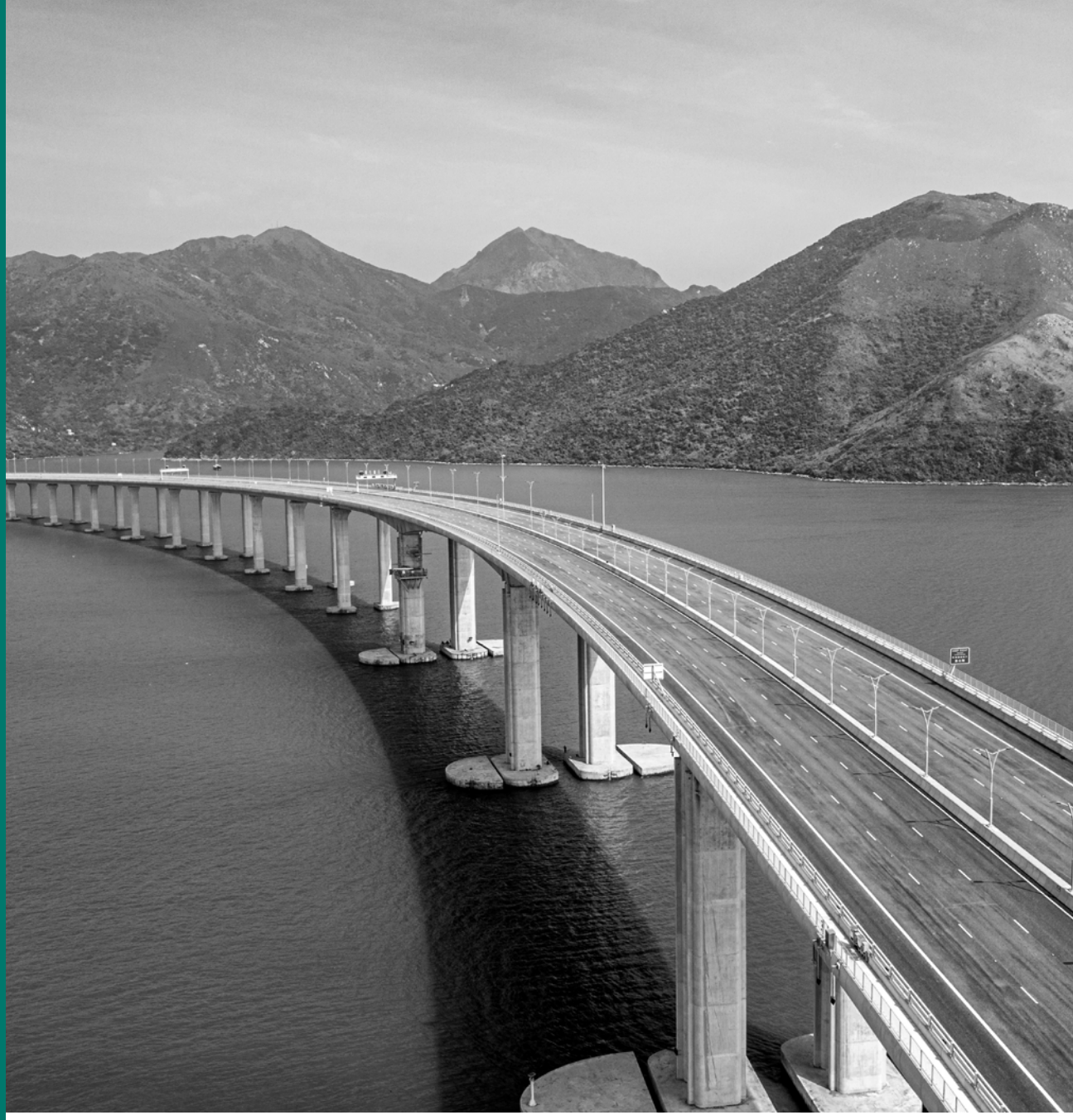

Welcome to the Q1 2025 edition of HFW's International Arbitration Quarterly, which features articles from colleagues across our network of global offices. This edition includes the following articles:

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- New Guidelines to Promote Arbitration in the Greater Bay Area Published by Mainland Chinese Authorities
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Editor
NICOLA GARE
Knowledge Counsel, London
T +44 (0)20 7264 8158
E nicola.gare@hfw.com

Editor
PETER SADLER
Partner, Perth
T +61 (0)8 9422 4702
E peter.sadler@hfw.com

DAMIAN HONEY
PARTNER, LONDON

NICOLA GARE
KNOWLEDGE COUNSEL, LONDON

"In catering for the evolving needs of business and ensuring smoother resolution of disputes by arbitration, the AA25 will help maintain England's position as a leading forum for commercial arbitration and wider Disputes."

Jurisdictional and Institutional developments:

WHAT DOES THE NEW ENGLISH ARBITRATION ACT 2025 MEAN FOR PARTIES?

"New law to turbocharge [England's] position as the world-leader in arbitration" - that is how the UK government has described the new English Arbitration Act 2025 (AA25), which received Royal Assent (i.e. being passed by Parliament) on 24 February, and is expected to come into force imminently. But what does it mean for parties and those involved in arbitration?

In this article we look beyond the headline, analyse the changes, and discuss the impact they will have.

Background

The changes brought in by the AA25 follow the Law Commission's 2022-2023 Review, on which we wrote in our earlier article 'Reform of the 1996 Arbitration Act – The Six Key Proposed Amendments'[1]. These changes subsequently became the subject of the Arbitration Bill put before parliament by the previous UK government in 2023. Since that time, the UK saw a change in government, which slowed the passage of the Bill through parliament. The Bill was recently picked up by this parliament and taken through the parliamentary process, resulting in the Act we now have.

The AA25 seeks to modernise the 1996 Arbitration Act (**AA96**) and addresses a number of issues parties and courts have had to grapple with in recent years. However, it is important to note that the AA25 is not a significant departure from the long-established principles in the AA96. Instead, the changes provide clarity; confirm the pro-arbitration stance of this jurisdiction; and will bolster London's reputation as a premier arbitration seat.

Summary of key changes

The key amendments the AA25 makes to AA96, are set out here, all of which we delve into in more detail below:

1. Clarification of the law applicable to arbitration agreements.
2. Providing tribunals with summary judgment style powers.
3. A wider and clearer duty on arbitrators to disclose circumstances they may raise doubts on their impartiality.
4. Increased court powers to support arbitration including emergency arbitrations and obtaining evidence from third parties.
5. Greater protection against liability for arbitrators when resigning or being removed.
6. Limiting Section 67 Challenges.

Key changes in detail

1. Clarity on the Governing Law of an Arbitration Agreement

The issue of governing law of an arbitration agreement arises when the applicable law of the contract differs from the seat of arbitration (e.g., Swiss law contract, English seat of arbitration), or is silent on that choice of governing law.

Following the decision of the UK Supreme Court in Enka v Chubb [2020] UKSC 38, the issue was widely debated, and it was universally agreed that a move away from common law principles to a more codified regime would be helpful on this point.

A new section 6A in the AA25 introduces a default position, which will end uncertainty and aligns English arbitration legislation with many Institutional Rules, e.g. the LCIA's rules. Section 6A provides that in the absence of an express agreement by the parties, and by default, the governing law of the arbitration agreement will be the law of the seat of the arbitration.

Moreover, section 6A confirms that where the governing law is agreed in the underlying contract, this will

1 Reform of the 1996 English Arbitration Act – The Six Key Proposed Amendments - HFW

not of itself result in that law applying to the arbitration agreement.

This amendment brings clarity, and the consistent rule makes commercial sense, which will be welcomed by many.

2. Summary Disposal

The AA96 does not contain any express provision for summary disposal in arbitration. The changes brought in by the new section 39A in the AA25 gives arbitrators a default power of summary disposal, exercisable on application by a party, and subject to a test of there being "no real prospect of success" on the relevant issue and apply equally to the claim and the defence.

This reform will help resolve disputes more efficiently both in terms of costs and time, and reflects the approach taken by a number of Institutional Rules. The change also helpfully aligns arbitration with the position in English litigation.

3. Arbitrators' Statutory Duty of Disclosure

The AA96 provides that arbitrators must be impartial (section 33). Under English law, arbitrators have a continuing duty to disclose "any relevant circumstances", which may reasonably give rise to justifiable doubts as to their impartiality, as established by the Supreme Court in Halliburton v Chubb [2020] UKSC 48.

The AA25 codifies this duty, and in addition, the new statutory duty of disclosure is objective i.e. based on what the arbitrator ought reasonably to be aware (rather than, subjective i.e. based on actual knowledge).

Importantly, the new provision also provides that the duty will commence from the time the arbitrator is approached to act.

It is hoped that these changes will encourage early disclosure and help reduce the number of arbitrator challenges, thereby saving all parties and those involved time and money.

4. Empowering Courts to Support Arbitration

In a change that will be welcomed by parties and practitioners, the courts' supportive powers of arbitration are further enhanced by an amendment to Section 44, which provides that the court can make orders "in relation to a party or any other person" i.e. to third parties.

5. Enhanced Arbitrator Immunity

The AA25 amends section 24 AA96 and provides that resignation by an arbitrator will not result in liability unless the resignation was unreasonable. Further that an arbitrator will not be required to pay the costs of proceedings to remove them unless their refusal was unreasonable.

These reforms will support and encourage those wishing to act as arbitrators.

6. Limiting Scope for Challenges to Awards under Section 67

Section 67 of the AA96 enables a party to challenge the tribunal's jurisdiction to hear the arbitration (or part of it) during the arbitration. If they are unsuccessful, they can later challenge the award in court claiming that the tribunal lacked jurisdiction.

The changes brought in by the AA25 Act provide that a challenging party can only make new objections, or present new evidence relating to jurisdiction, if it can demonstrate that these could not have been raised on the earlier challenge for example, they are facts that subsequently came to light.

In a departure from the Supreme Court judgment in Dallah Real Estate and Tourism Holding Company v The Ministry of Religious Affairs, Government of Pakistan [2010] UKSC 46, the AA25 provides that there should be no rehearing of oral evidence, unless the court determines it necessary in the interests of justice. This provision is aimed at preventing tactical appeals intended to cause delays by effectively holding a re-hearing of the issues.

Conclusion

The changes made to the AA96 are the result of careful debate, consultations, and submissions by a range of those involved in the arbitration process, including HFW. As a result, the AA25 is thankfully not a case of throwing the baby out with the bath water, but a clear and more measured response recognising the benefits provided by the AA96, as well as the changes that were required following developments taking place over the last almost 30 years.

In catering for the evolving needs of business and ensuring smoother resolution of disputes by arbitration, the AA25 will help maintain England's position as a leading forum for commercial arbitration and wider Disputes.

It is worth noting that the changes will not apply to arbitrations commenced before the AA25 comes into force i.e. the AA96 will apply instead.

DAMIAN HONEY
Partner, London
T +44 (0)20 7264 8354
E damian.honey@hfw.com

NICOLA GARE
Knowledge Counsel, London
T +44 (0)20 7264 8158
E nicola.gare@hfw.com

KEVIN WARBURTON
PARTNER, HONG KONG

CATRIONA HUNTER
KNOWLEDGE COUNSEL,
HONG KONG

CURTIS PAK
ASSOCIATE, HONG KONG

NEW GUIDELINES TO PROMOTE ARBITRATION IN THE GREATER BAY AREA PUBLISHED BY MAINLAND CHINESE AUTHORITIES

On 14 February 2025, the Supreme People's Court (SPC) and the Ministry of Justice jointly published guidelines listing seven measures designed to enhance the function of arbitration to assist with high-quality development of the Guangdong-Hong Kong-Macao Greater Bay Area (GBA). The initiative hopes to improve dispute resolution mechanisms in the region, strengthen international collaboration, and elevate China's arbitration practices to a globally competitive level.

Key Highlights of the Guidelines

1. **Flexible Arbitration Choices:** Enterprises with investments from Hong Kong and Macau operating in the nine mainland GBA cities[1] (**GBA Cities**) can now choose Mainland China, Hong Kong or Macau as the arbitration seat for resolving commercial disputes. This flexibility will facilitate cross-border legal cooperation and provide businesses with tailored arbitration options.
2. **World-Class Arbitration Institutions:** The guideline emphasises the construction of world-class arbitration institutions in Guangzhou and Shenzhen. It is hoped these centres will complement the establishment of international legal and dispute resolution service centres in Hong Kong and Macau. Unified arbitration rules and an online dispute resolution platform for the GBA are also in development to create a globally influential arbitration hub.
3. **Innovative Arbitration Models:** To cater to emerging industries such as artificial intelligence, the digital economy, and life sciences, the guidelines promote the development of arbitration rules and business models aligned with new production forces. They also encourage the use of intelligent technology in arbitration, fostering efficiency and innovation in dispute resolution.
4. **Integrated Arbitration and Litigation:** A platform connecting the judiciary and arbitration institutions will be established in the GBA Cities. This platform aims to streamline processes through online services, promoting seamless integration between arbitration and litigation.
5. **Case Database and Awareness Campaigns:** A GBA arbitration and judicial review case database will be created to strengthen case guidance and public awareness. By publishing exemplary cases, the guidelines aim to encourage more parties to choose arbitration as their preferred dispute resolution method.
6. **Shared Resources Across the GBA:** The guidelines support the creation of a shared roster of arbitrators across Guangdong, Hong Kong, and Macau. They also aim to establish international standards for arbitration secretaries, a shared pool of secretaries, and mechanisms for arbitrators to independently select secretaries. Enhanced information sharing and coordination between courts, administrative authorities, and arbitration institutions are also prioritised.
7. **Talent Development and Training:** A unified talent development mechanism will be implemented to train arbitrators and arbitration secretaries. The GBA will establish training bases to provide joint training for judges and arbitrators. Hong Kong's expertise in international legal talent training will play a pivotal role in fostering a new generation of arbitration professionals.

Impact on the GBA and beyond

The guidelines have the potential to significantly enhance the legal infrastructure of the GBA, making

1 Guangzhou. Shenzhen, Zhuhai, Foshan, Dongguan, Zhongshan, Jiangmen, Huizhou and Zhaoqing.

it a more attractive destination for international businesses. By integrating arbitration resources across Guangdong, Hong Kong, and Macau, the GBA aims to establish itself as a premier hub for international dispute resolution. The development of innovative arbitration platforms and the implementation of international standards will increase the credibility and competitiveness of China's arbitration practices on the global stage.

Additionally, the guidelines' focus on talent development will aim to establish a steady supply of skilled arbitration professionals, further bolstering the region's capacity to handle complex cross-border disputes.

Conclusion

The guidelines mark a significant step forward in enhancing international cooperation and promoting high-quality development in the GBA. By leveraging advanced arbitration mechanisms and shared resources, the region has the platform to become a leading example of legal innovation and global integration.

The guidelines are particularly relevant to HFW, which is uniquely positioned to assist businesses in navigating the evolving arbitration landscape in the GBA. HFW's Shenzhen office (located in the modern services hub of Qianhai) opened in 2024 and is the firm's 21st office worldwide. It is HFW's third office in Greater China, following Hong Kong and Shanghai which opened more than 45 and 25 years ago respectively. With a strong presence in the region, HFW offers unparalleled expertise in cross-border dispute resolution, commercial arbitration, and international trade.

The firm's deep understanding of the legal frameworks in Mainland China and Hong Kong enables it to provide tailored solutions that align with the latest regulatory developments.

KEVIN WARBURTON
Partner, Hong Kong
T +852 3983 7629
E kevin.warburton@hfw.com

CATRIONA HUNTER
Knowledge Counsel, Hong Kong
T +852 3983 7675
E catriona.hunter@hfw.com

CURTIS PAK
Associate, Hong Kong
T +852 3983 7659
E curtis.pak@hfw.com

Anson Cheung, Trainee Solicitor, Hong Kong assisted in the preparation of this article.

UNDERSTANDING THE HKIAC'S NEW PRACTICE NOTE ON COMPATIBILITY OF ARBITRATION CLAUSES: PRACTICAL OBSERVATIONS AND TIPS

KEVIN WARBURTON
PARTNER, HONG KONG

CATRIONA HUNTER
KNOWLEDGE COUNSEL,
HONG KONG

CURTIS PAK
ASSOCIATE, HONG KONG

On 20 January 2025, the Hong Kong International Arbitration Centre (HKIAC) published its much-anticipated Practice Note on Compatibility of Arbitration Clauses under the HKIAC Administered Arbitration Rules.

This Practice Note offers vital guidance on navigating multi-party and multi-contract disputes under the 2018 and 2024 HKIAC Administered Arbitration Rules. Drawing from the Practice Note and our own experience, this article provides practical observations and guidance for parties drafting arbitration clauses and handling multi-contract disputes.

Understanding Compatibility: Moving Beyond Identical Clauses

The HKIAC has clarified that arbitration agreements across related contracts do not need to be identical to be deemed compatible. Instead, differences must be "surmountable" by the parties, the tribunal, or the HKIAC itself. For example, the HKIAC has deemed arbitration agreements governed by different, but aligned, legal systems such as English and Hong Kong law to be compatible. Similarly, situations where respondents agree on a co-arbitrator despite clauses granting different respondents the right to appoint have also been found compatible.

However, while identical clauses are not mandatory, simplicity and consistency remain best practices. Parties should avoid unnecessary variations in governing law, seat, language, or tribunal appointment mechanisms across related contracts. Even minor differences can lead to procedural inefficiencies or objections, jeopardising the enforceability of awards.

Common Pitfalls: Avoiding Incompatibility

The Practice Note highlights several scenarios where arbitration clauses were deemed incompatible. For instance, clauses were found incompatible when one contract required a sole arbitrator while others required three arbitrators, or when contracts provided for different languages of arbitration such as Chinese and English. Conflicting mechanisms for appointing the presiding arbitrator also rendered clauses incompatible.

These examples underscore the risk of including bespoke arbitration provisions in contracts. For instance, specifying different languages of arbitration may create challenges unless absolutely necessary. Even if bilingual proceedings are an option, the cost implications and limited pool of qualified arbitrators should be carefully considered. To minimise such risks, the HKIAC's model arbitration clause is strongly recommended, particularly for tribunal appointment mechanisms. Where bespoke provisions are unavoidable, it is essential to ensure that the arbitration clauses are carefully aligned across related contracts.

Drafting for Multi-Contract Scenarios: A Holistic Approach

When drafting arbitration clauses for multi-contract transactions, parties should adopt a holistic approach that considers all aspects of compatibility. Key features such as the seat, number of arbitrators, governing law, and language of arbitration should be consistent across all related contracts. Parties should also avoid granting specific parties the right to appoint arbitrators, as this introduces complexity and the potential for incompatibility. Instead, it is preferable to defer to the HKIAC Rules for tribunal constitution. Where possible, consolidating related contracts into a single overarching agreement with a unified arbitration clause is an effective way to eliminate the risk of conflicting clauses altogether.

Managing Arbitrator Appointments in Multi-Party Disputes

Articles 28.8 and 29.2 of the HKIAC Rules empower the HKIAC to appoint the tribunal in consolidated or single arbitrations involving multiple contracts. The Practice Note confirms that, while the HKIAC respects party autonomy, it may override party designations in cases where non-participating parties are involved or where overriding designations is necessary to ensure the integrity and equal treatment of the proceedings.

In these scenarios, it is crucial for parties to proactively engage with the HKIAC to ensure fair and efficient tribunal appointments. For multi-party contracts, parties should consider including provisions requiring joint arbitrator designations by parties on the same side to simplify the appointment process.

Lessons from Recent Hong Kong Court Cases

The Practice Note aligns with the Hong Kong Court's Approach to Single Arbitration under Multiple Contracts. Two notable Hong Kong court decisions were handed down in 2024, both of which highlighted the risks of incompatible arbitration clauses. In *SYL and LBL v. GIF [2024] HKCFI 1324*, the issue of compatibility has broader implications beyond requests for claims to be heard in a consolidated or single arbitration the Hong Kong Court of First Instance as the Court set aside a jurisdictional award due to conflicting arbitrator appointment procedures. Similarly, in AAA, BBB, CCC v. DDD [2024] HKCFI 513, the court found arbitration agreements under a loan agreement and a promissory note to be incompatible due to significant differences in procedural requirements.

These cases emphasise the importance of rigorous compatibility analysis during both drafting and dispute resolution. Parties should avoid procedural discrepancies, such as differing arbitrator appointment mechanisms or pre-arbitration negotiation periods, which may undermine the tribunal's jurisdiction or jeopardise the enforceability of awards.

Balancing Efficiency with Clarity

The HKIAC's pragmatic approach to compatibility emphasises procedural and cost efficiency. However, the burden is on the parties to demonstrate that differences in arbitration clauses do not hinder practical feasibility or undermine consent. While procedural efficiency is desirable, it should not come at the expense of clarity or enforceability. Parties must strike a balance between efficiency and robust dispute resolution mechanisms, ensuring that arbitration clauses are clear, enforceable, and aligned with the parties' intentions.

Conclusion

The HKIAC's Practice Note on Compatibility of Arbitration Clauses provides invaluable guidance for managing multi-contract disputes. However, the ultimate responsibility lies with parties and their counsel to draft clear, aligned, and enforceable arbitration agreements. By adopting best practices and carefully considering compatibility from the outset, parties can unlock the full potential of HKIAC arbitration, mitigating risks and maximising efficiency. For more information on drafting arbitration clauses or managing multi-contract disputes, feel free to reach out to our arbitration specialists.

KEVIN WARBURTON
Partner, Hong Kong
T +852 3983 7629
E kevin.warburton@hfw.com

CATRIONA HUNTER
Knowledge Counsel, Hong Kong
T +852 3983 7675
E catriona.hunter@hfw.com

CURTIS PAK
Associate, Hong Kong
T +852 3983 7659
E curtis.pak@hfw.com

Anson Cheung, Trainee Solicitor, Hong Kong assisted in the preparation of this article.

KEVIN WARBURTON
PARTNER, HONG KONG

CATRIONA HUNTER
KNOWLEDGE COUNSEL,
HONG KONG

CURTIS PAK
ASSOCIATE, HONG KONG

SUPREME PEOPLE'S COURT JUDICIAL INTERPRETATION ON HONG KONG AND MACAU INVESTMENT ENTERPRISES IN THE GREATER BAY AREA

On 14 February 2025, the Supreme People's Court of China (SPC) published a judicial interpretation, catchily titled "Reply of the SPC on the Effectiveness of Agreements Choosing Hong Kong or Macau Law as the Applicable Law for Contracts or Choosing Hong Kong or Macau as the Arbitration Seat for Hong Kong and Macau Investment Enterprises Registered in Mainland China within the Guangdong-Hong Kong-Macao Greater Bay Area".

In short, the interpretation purports to address legal issues surrounding Hong Kong and Macau investment enterprises registered in the Mainland areas of the Greater Bay Area (**GBA**). The interpretation clarifies the applicability of Hong Kong and Macau law in contractual agreements and the validity of arbitration agreements designating Hong Kong or Macau as the arbitral seat.

Key provisions of the Judicial Interpretation

The key provisions of the interpretation are as follows:

- **Choice of Law:** If one or both parties to a contract are Hong Kong or Macau investment enterprises registered in Shenzhen or Zhuhai, and they choose Hong Kong or Macau law as the applicable law for their contract, the People's Court will support this choice, provided it does not violate mandatory provisions of national law or harm public interests.
- **Arbitration Agreements:** For Hong Kong or Macau investment enterprises registered in any of the nine cities within the GBA[1], if the parties agree to designate Hong Kong or Macau as the arbitral seat, the People's Court will not support claims that the arbitration agreement is invalid due to the absence of Hong Kong or Macau-related elements.
- **Recognition and Enforcement of Arbitral Awards:** If a dispute is submitted to arbitration as agreed, and an arbitral award is made, the People's Court will not support claims that the arbitral award should not be recognised or enforced on the grounds that the dispute lacks Hong Kong or Macau-related elements or that the arbitration agreement is invalid.
- **Definition of Investment Enterprises:** The interpretation defines "Hong Kong investment enterprises" and "Macau investment enterprises" as those wholly or partially invested by natural persons, enterprises, or other organisations from the Hong Kong Special Administrative Region or the Macau Special Administrative Region and registered in Mainland China.

Significance and impact of the Judicial Interpretation

The judicial interpretation has several significant implications for the legal and business environment in the GBA:

- **Legal Certainty and Predictability:** By clarifying the applicability of Hong Kong and Macau laws and arbitration agreements, the interpretation provides greater legal certainty and predictability for investors. This is particularly important for cross-border investments, where legal ambiguities can pose significant risks.
- **Enhanced Investment Protection:** The interpretation strengthens the protection of Hong Kong and Macau investors by ensuring that their choice of law and arbitration agreements are respected. This can enhance investor confidence and encourage more investments in the GBA.

1 Guangzhou, Shenzhen, Zhuhai, Foshan, Huizhou, Dongguan, Zhongshan, Jiangmen and Zhaoqing.

- **Promotion of the GBA Integration:** The interpretation aligns with the broader goal of promoting economic integration within the GBA. By facilitating the use of Hong Kong and Macau laws and arbitration mechanisms, it supports the development of a more integrated and cohesive legal framework in the region.
- **Judicial Support for Arbitration:** The interpretation underscores the judiciary's support for arbitration as a means of dispute resolution. By upholding the validity of arbitration agreements and the enforceability of arbitral awards, it reinforces the role of arbitration in resolving commercial disputes.
- **Attractiveness to Foreign Investors:** The interpretation may also make the GBA more attractive to foreign investors who are familiar with and prefer the legal systems of Hong Kong and Macau. This can contribute to the region's economic growth and development.

Conclusion

The SPC's judicial interpretation represents a landmark development in the legal framework governing the GBA. By recognising the validity of Hong Kong and Macau law in contracts and arbitration agreements, the interpretation enhances legal certainty, promotes cross-border economic collaboration, and reinforces the GBA's position as a global business hub. This interpretation lays a strong foundation for the continued integration of the GBA's legal and economic systems. It reflects China's commitment to fostering a dynamic and investor-friendly environment within the framework of "one country, two systems," ensuring the region's long-term growth and competitiveness.

KEVIN WARBURTON
Partner, Hong Kong
T +852 3983 7629
E kevin.warburton@hfw.com

CATRIONA HUNTER
Knowledge Counsel, Hong Kong
T +852 3983 7675
E catriona.hunter@hfw.com

CURTIS PAK
Associate, Hong Kong
T +852 3983 7659
E curtis.pak@hfw.com

Anson Cheung, Trainee Solicitor, Hong Kong assisted in the preparation of this article.

PETER SADLER
PARTNER, PERTH

"This case demonstrates that Australia continues to be an arbitration-friendly jurisdiction, upholding principles that support the autonomy and effectiveness of arbitral proceedings."

Recent key case law:

OIL BASINS LIMITED VS ESSO AUSTRALIA RESOURCES PTY LTD [2025] VSC 34

In February 2025, Justice Croft in the Victorian Supreme Court handed down a judgment on staying court proceedings in favour of arbitration under s 7 of the *International Arbitration Act 1974* (Cth) and the competence of arbitral tribunal to rule on its own jurisdiction (i.e., the *Kompetenz-Kompetenz* principle) – Oil Basins Limited vs Esso Australia Resources Pty Ltd [2025] VSC 34. Justice Croft is regarded as one of the eminent arbitration list judges in Australia and his decisions are well reasoned and instructive for arbitration practitioners.

The dispute involved a historic royalty payable by a consortium of petroleum producers (**the Esso Consortium**) in the Bass Strait to Oil Basins Limited (now called Emperor Energy Limited). The royalty, which was the subject of prior disputes between the parties, was payable under a "**Settlement Agreement**".

The Settlement Agreement contained an arbitration clause which expressly contemplated disputes as to the methodology by which the royalty was calculated. The clause also contemplated the arbitral tribunal making limited modifications to the methodology. But that power was not unfettered: certain parts of the methodology were off-limits to the arbitral tribunal and could only be amended by a Special Referee, and certain parts could not be modified in a way that was inconsistent with prior modifications made by the Special Referee.

Oil Basins disagreed with the way the Esso Consortium was calculating Australian Good and Services Tax (**GST**) on royalty payments. The parties were also in a separate dispute regarding the appropriate treatment of depreciation and decommissioning (**D&D**) in the calculation of the royalty.

In March 2024, the parties referred both the GST dispute and the D&D dispute to arbitration; however, the D&D dispute was referred subject to an objection from Oil Basins that the D&D dispute was not arbitral under the Settlement Agreement. Oil Basins objected because the resolution of the D&D dispute (it said) was not arbitral because the subject matter of the dispute was off-limits to the arbitral tribunal under the arbitration agreement.

In April 2024, Oil Basins commenced proceedings in the Victorian Supreme Court seeking declarations that the D&D dispute was not arbitral and an injunction preventing the Esso Consortium from taking steps to progress the arbitration process in respect of the D&D dispute. In May 2024, the Esso Consortium sought to stay those proceedings in favour of arbitration and its application was heard before Justice Croft in November 2024.

The law on the competence of arbitral tribunal to rule on its own jurisdiction is settled in Australia; however, there are different approaches as to the level of proof the court should require as to the validity of the arbitration agreement before staying court proceedings. The authorities on this issue generally state that the court is not to act as a court of summary disposal filtering the matters that are suitable for arbitration. Nor is the court's role to assess the strength of the case raised by the issue or matter.

In *Hancock Prospecting Pty Ltd v Rinehart* (2017) 257 FCR 442, [149], the Full Federal Court held that only if there is *"no sustainable argument that a matter or dispute can be characterised as falling within the agreement, [then] it should not be referred to arbitration"*. However, the Full Federal Court did say that when the jurisdictional challenge was strictly confined to a short question of law that, once determined, would be dispositive of the dispute. In that limited situation, the Full Court held, *"it might be less than useful for the Court not to deal with [that question]"*.

Justice Lyons in *Transurban WGT Co Pty Ltd v CPB Contractors Pty Ltd* (2020) VSC 476 subsequently summarised the reasoning of the Full Court as follows:

(1) if the issues relating to the proviso were of short compass, it may be appropriate for the Court to resolve the issue. For example, if there is a question of law otherwise affecting the answer to the question of jurisdiction, especially one that is confined, which might be dispositive, then it might be useful for the Court to address the issue.

(2) if the issues relating to the proviso are of some legal and/or factual complexity, then it will be generally more appropriate for the proviso issue to be referred to the arbitral tribunal

What is the rationale for this exception? That is found in *Dell Computers Corp v Union des Conformateurs* [2007] 2 SCR 801 per Deschamps J in the Supreme Court of Canada *"It allows a legal argument relating to the arbitrator's jurisdiction to be resolved once and for all, and also allows the parties to avoid duplication of a strictly legal debate. In addition, the danger that a party will obstruct the process by manipulating procedural rules will be reduced, since the court must not, in ruling on the arbitrator's jurisdiction, consider the facts leading to the application of the arbitration clause."*

In support of the stay application, the Esso Consortium relied on the Full Federal Court's decision in *Hancock*, and then set about demonstrating why the exception was not applicable. In particular, the Consortium contended that there was a sustainable factual question as to whether the D&D dispute was arbitral (or at least a mixed question of law and fact), and therefore, it was appropriate that the matter be determined by the arbitral tribunal.

Oil Basins resisted the stay application by relying on the three-step test set down by Justice Croft in an earlier decision of *Robotunits Pty Ltd v Mennel* (2015) 49 VR 323, 336 [21]:

(1) What is the matter (or matters) for determination in the present proceeding?

(2) Is the matter (or matters) capable of settlement by arbitration in pursuance of the agreement? Or, in other words, what is the scope of the arbitration agreement?

(3) Is the matter (or matters) capable of settlement by arbitration?

The elements of these questions are somewhat intertwined; however, in my view, setting them out in this way helps focus attention on the distinct requirements imposed by the statutory language in issue.

In application of the test in *Robotunits*, the Victorian Supreme Court is required to decide whether the matters in issue are capable of settlement by arbitration (i.e., those matters are within the scope of the arbitration agreement). Oil Basins sought to characterise the exception in *Hancock* as one but not the only circumstance in which a court might refuse a stay, on application of the three-step test set out above.

Justice Croft sided with the Esso Consortium and made orders an order staying the court proceeding.

In doing so, Justice Croft observed that *Robotunits* was not relevant as it did not consider the effect of application of the doctrine of *Kompetenz-Kompetenz*, unlike the Full Federal Court in Hancock. Applying that principle, which is recognised in Australia common law and in Article 16 of the Model Law (which has force of law in Australia under s 16 of the *International Arbitration Act*), leads to the conclusion that the arbitral tribunal, rather than the court, should determine whether the D&D dispute was arbitral.

Importantly, in reaching that conclusion, Justice Croft stated that this was not a case where the Esso Consortium actively submitted to the court's jurisdiction for it to determine the merits of D&D dispute, participating without objection in the court's case management procedures and interlocutory applications, and then only belatedly raised the issue of the effect of an arbitration agreement (as was the case in *Dialogue Consulting Pty Ltd v Instagram, Inc* [2020] FCA 1846). The Esso Consortium's objection was ventilated early, and the stay application was brought promptly.

This case demonstrates that Australia continues to be an arbitration-friendly jurisdiction, upholding principles that support the autonomy and effectiveness of arbitral proceedings. Justice Croft delivered the judgment in less than three months, which is timely, particularly over the holiday season in Australia. The actual proceeding itself took nine months to resolve. Parties should be encouraged (and if not willing, pushed) to bring these types of applications on faster for a hearing because it delays the underlying arbitration.

PETER SADLER
Partner, Perth
T +61 (0)8 9422 4702
E peter.sadler@hfw.com

Robin Chai, Law Graduate, Perth assisted in the preparation of this article.

ASHLEY CHANDLER
ASSOCIATE, MELBOURNE

"This case serves as a timely reminder to companies investing in foreign jurisdictions of the importance of thorough planning and analysis in structuring those investments to secure effective protection whether by treaty or in contract."

AUSTRALIAN COURT UPHOLDS INDIA'S IMMUNITY FROM PROCEEDINGS TO ENFORCE AN INVESTMENT TREATY AWARD UNDER THE NEW YORK CONVENTION

In *Republic of India v CCDM Holdings, LLC* [2025] FCAFC 2, the Full Court of the Federal Court of Australia held that India was entitled to exercise rights of state immunity when overturning a decision not to set aside an application for enforcement of an arbitration award. Crucially, the decision found that India had not waived foreign state immunity by accession to the New York Convention in respect of non-commercial disputes.

Background

Three Mauritian shareholders (**Investors**) invested in an Indian company that contracted with an Indian state-owned entity to lease capacity on two Indian satellites. The agreement was later annulled by the Indian Cabinet Committee on Security (an administrative arm of the Government of India) on grounds of increased demand for capacity for public purposes. The Investors instituted arbitral proceedings under the Mauritius-India bilateral investment treaty (**BIT**), claiming unlawful expropriation and breach of the obligation to treat foreign investors fairly and equitably.

The arbitral tribunal upheld those claims and awarded a total of USD 111 million in damages against India.

Application for enforcement and decision at first instance

The Investors applied to enforce the award under Australia's *International Arbitration Act 1974* which incorporates the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (1958) (**New York Convention**). In the previous proceeding *CCDM Holdings, LLC v Republic of India (No 3)* [2023] FCA 1266, India filed an interlocutory application to set aside the application on the basis that it was inconsistent with its rights to state immunity under the *Foreign States Immunities Act 1985* (**FSIA**).

By way of background, section 9 of the FSIA provides that foreign states have immunity from the jurisdiction of Australian courts, which means that Australian courts will not generally entertain claims against foreign states. Section 10 provides an exception to this general rule, where a State has submitted to the jurisdiction by agreement. The key question in this case was whether by signing the New York Convention, India had submitted to the jurisdiction by agreement under section 10.

At first instance, a single judge of the Federal Court of Australia concluded that India's accession to the New York Convention did amount to a submission to the jurisdiction. The Federal Court concluded that there was no basis in the text of the New York Convention for India's contention that the Convention was limited to commercial or private law disputes, of which this case was one. India had relied on its commercial reservation to the Convention, whereby it undertook under Art I(3) to:

> *"apply the Convention only to differences arising out of legal relationships, whether contractual or not, which are considered as commercial under the [law of India]."*

However, the Federal Court decided that this reservation was not directly relevant as Australia, where the enforcement application was made, had not made a reservation of this kind.

Consequently, India's application to set aside the enforcement proceedings failed and India appealed.

The Appeal

On appeal, the Full Court of the Federal Court of Australia (**Full**

Court), comprised of three judges, considered two issues:

1. whether by ratifying the New York Convention, India waived state immunity in respect of the enforcement of an award that is generally within the scope of the New York Convention but excluded by India's reservation; and
2. whether the award was outside India's commercial reservation, i.e., whether it arose out of a legal relationship, whether contractual or not, which is considered as commercial under the law of India.

The second issue was in fact not contested in the Full Court.

On the first issue, the Full Court considered the scope of the Convention in light of India's reservation and held that the New York Convention applies to India, and reciprocally to other States, only to the extent of the reservation, i.e., only to commercial disputes. In considering whether that amounted to a waiver, the Full Court applied the test standard established by the High Court of Australia in the landmark decision in *Kingdom of Spain v Infrastructure Services Luxembourg S.à.r.l* [2023] HCA 11.

The High Court of Australia established, in the context of the Convention on the Settlement of Investment Disputes between States and Nationals of Other States (ICSID Convention), that any waiver of rights to state immunity must have been made in a "clear and recognisable manner" to a "high level of clarity and necessity" such that it is "unmistakable".

Applying that standard, the Full Court held that by its reservation, India had made it plain that it did not and would not treat non-commercial disputes as being subject to the New York Convention and therefore had not waived immunity in respect of those disputes. While the Full Court appeared to indicate support for the conclusion that India has waived immunity in respect of awards within its reservation, i.e., awards arising from commercial disputes, it did not decide this point.

The Full Court also distinguished India's ratification of the New York Convention from Spain's accession to the ICSID Convention in *Kingdom of Spain*. India, unlike Spain under the ICSID Convention, has no obligation under the New York Convention to recognise as binding and enforce an award that was excluded by its commercial reservation. Further, the ICSID Convention expressly preserves immunity from execution. By contrast, the New York Convention contains no limited express preservation of state immunity that gave rise to an implication that other immunity was not preserved.

The Full Court accordingly ordered that the Investors' originating application be set aside by reason that India is immune from the jurisdiction of the Federal Court in that proceeding pursuant to section 9 of the FSIA.

Takeaways

Foreign state immunity in the context of award enforcement has been a hot topic in Australia in recent years with multiple judgments issued in both the Spanish and Indian enforcement sagas. This judgment may not yet be the end of the story.

On 28 February 2025, the Investors filed an application for special leave to appeal to the High Court of Australia. If granted, it will be interesting to see whether the High Court upholds the Full Court's analysis. Notably, courts internationally have adopted one of two different approaches. In *Union of India v Vodafone Group PLC UK & Anr* 2018:DHC:2956 and *Union of India v Khaitan Holdings (Mauritius) Ltd & Ors* 2019:DHC:571, the courts in India have followed a similar approach to the Full Court in this case, while the Quebec Court of Appeal recently concluded that India had waived immunity in proceedings brought by the same Investors in *Republic of India v CCDM Holdings* 2024 QCCA 1620.

Whether or not special leave is granted, this case serves as a timely reminder to companies investing in foreign jurisdictions of the importance of thorough planning and analysis in structuring those investments to secure effective protection whether by treaty or in contract.

We will report on the High Court's decision in a later edition of the Arbitration Quarterly if leave is granted.

ASHLEY CHANDLER
Associate, Melbourne
T +61 (0)3 8601 4544
E ashley.chandler@hfw.com

Nicholas Bea, Law Graduate, Melbourne assisted in the preparation of this article.

ARB 006/2024 NEVIL V NIGEL – DIFC COURTS GRANT INTERIM RELIEF IN SUPPORT OF ARBITRATION

NICK BRAGANZA
PARTNER, DUBAI

TANISHA SAXENA
SENIOR ASSOCIATE, DUBAI

"We consider that the DIFC Courts now have significant powers to issue interim injunctions in support of arbitration proceedings, whether seated in the DIFC or not."

The Courts of the Dubai International Financial Centre (the DIFC) have once again demonstrated their pro-arbitration stance, and confirmed that they will provide support to arbitration proceedings even where there is a question as to whether the seat of the applicable arbitration is the DIFC.

Interim relief required

HFW is currently acting for a European trading company (the **Claimant**) against a Dubai Multi Commodities Centre (DMCC) entity (the **Respondent**) in a matter relating to the sale of oil cargo, for which prepayments were made but no oil was delivered. There was an arbitration agreement in the relevant sale contract, but the Claimant needed to move quickly to avoid the potential dissipation of assets, and wished to take steps to preserve their position in respect of the funds they had paid.

Therefore, after identifying assets in Dubai, the Claimant turned to the DIFC Courts to provide assistance. These are common law courts based "offshore" in the Emirate of Dubai, which are able to grant interim relief such as freezing injunctions and orders for disclosure.

Under section 15 of the DIFC Arbitration Law, parties may request the DIFC Courts to grant an "interim measure of protection" before or during arbitration proceedings. However, this will only generally apply where the DIFC is the seat of the arbitration.

Uncertainty over arbitration agreement

There was a question as to whether the seat of the arbitration was the DIFC in this case. The transaction was subject to a sale agreement which included the provision which subjected any disputes to "Dubai arbitration". This was unclear because the seat of the arbitration and specific arbitral rules were not expressly identified. Accordingly, the arbitration agreement was open to interpretation – was the agreement referring to ad hoc arbitration seated in (onshore) Dubai, arbitration under the Dubai International Arbitration Centre (**DIAC**) Rules seated in the DIFC or seated in onshore Dubai?

The DIFC Courts had consistently found that references to "Dubai" in jurisdiction clauses could include the DIFC, but generally not in the context of interpreting what the seat of arbitration should be. In *Dhir v Waterfront Properties* [2009] DIFC CFI 011, the "Emirate of Dubai" in the context of arbitration seats was deemed to be non-DIFC Dubai.

While the DIFC Courts' appetite to take jurisdiction over matters where both parties had no connection to the DIFC Courts were limited (at that time, in April 2024), the availability of the interim relief from the DIFC Courts meant that it was a strategy worth pursuing. We were aware of bank accounts located in onshore Dubai, and aware that the most efficient means of freezing those bank accounts was to apply for an injunction in the DIFC Courts and subsequently enforce the injunction in onshore Dubai.

Freezing injunction granted

We proceeded to apply for a worldwide freezing injunction and disclosure order and argued that "Dubai arbitration" should be interpreted as DIAC arbitration. DIAC was deemed necessary because the default seat of arbitration under the DIAC Rules is the DIFC, pursuant to Dubai Decree No. 34 of 2021.

At the ex parte hearing, HFW was successful in obtaining a freezing order from the DIFC Courts against the Respondent for the full amount of the prepayments (USD 230 million). Enforcement followed in the onshore Dubai Courts and the Respondent's assets in the UAE have been frozen. In addition, HFW was able to secure orders requiring the Respondent to disclose various information in order to assist the Claimant's efforts in recovering the prepayments. This was a unique and pivotal aspect of

the application given the vast sums outstanding to the Claimant.

At the return hearing, the Respondent challenged jurisdiction arguing that this was clearly an ad hoc arbitration with a Dubai onshore seat, relying on the *Dhir v Waterfront Properties* case. Justice Shamlan Al Sawalehi found that "Dubai arbitration" meant ad hoc arbitration and not DIAC arbitration. However, he found that "Emirate of Dubai" did not always mean non-DIFC Dubai in every case. He found it was important to consider the surrounding circumstances and the context of the dispute, and here, the Court considered that the parties had agreed English law, the international nature of the parties and the transaction and affidavit evidence of our client and determined that the appropriate forum was ad hoc arbitration with a DIFC seat, and interim relief was upheld.

The decision is subject to appeal to the DIFC Court of Appeal, and an ad hoc arbitration has now commenced.

Supportive jurisdiction of the DIFC Courts?

Subsequent to this application, there was a significant development in DIFC jurisprudence. In *Carmon Reestrutura v Antonio Joao* [2024] DIFC CA 003, the DIFC Court of Appeal changed the DIFC Courts' approach to worldwide freezing orders. Overturning the much criticised decision in *Sandra Holding v Al Saleh* [2023] DIFC CA 003, the Court held that the DIFC Courts can grant such orders in support of foreign proceedings, even when the dispute has no direct connection to the DIFC. This raises a broader question: would the DIFC Courts be willing to provide interim relief in support of foreign proceedings, even where there are no assets or parties in Dubai or in the DIFC.

As such, we consider that the DIFC Courts now have significant powers to issue interim injunctions in support of arbitration proceedings, whether seated in the DIFC or not. Accordingly the DIFC Courts may well exercise a supportive role for all arbitrations, as well as supervisory role when the DIFC is the seat. This is of significant importance to parties in arbitration proceedings seeking to protect their position in respect of assets located in Dubai (onshore or not).

The case referenced is *Nevil v Nigel* [2024] ARB 006. Nicholas Braganza, Luke Garrett and Tanisha Saxena of HFW's Dubai office represented the Claimant in these proceedings.

NICK BRAGANZA
Partner, Dubai
T +971 4 423 0587
E nicholas.braganza@hfw.com

TANISHA SAXENA
Senior Associate, Dubai
T +971 4 423 0582
E tanisha.saxena@hfw.com

HONG KONG COURT CONFIRMS JURISDICTION TO ORDER SECURITY FOR COSTS AGAINST FOREIGN INDIVIDUAL AND HONG KONG COMPANY IN SET-ASIDE PROCEEDINGS OF ARBITRAL AWARDS

KEVIN WARBURTON
PARTNER, HONG KONG

CATRIONA HUNTER
KNOWLEDGE COUNSEL,
HONG KONG

CURTIS PAK
ASSOCIATE, HONG KONG

In a significant decision for international arbitration practitioners, the Hong Kong Court of First Instance (HKCFI), in the recent decision of P1 and *P2 v D* [2024] HKCFI 3052, reaffirmed its jurisdiction and provided clarity as to when to order security for costs against parties seeking to set aside awards of Hong Kong seated arbitration.

The ruling in *P1 and P2 v D* illustrates how Hong Kong courts uphold Hong Kong's pro-arbitration policy in set-aside applications – by distinguishing security for costs applications during set-aside proceedings (court proceedings during the 'challenge' phase) and those during the arbitral tribunal's phase of determining parties' mutual rights and obligations (arbitral proceedings during the 'determination' phase), the court found that policy considerations underlying the Hong Kong Arbitration Ordinance (Cap. 609, **Arbitration Ordinance**), which prohibits an arbitral tribunal from ordering security for costs against a foreign plaintiff on its foreign nature, do not apply to security for costs applications heard by the court during set-aside proceedings.

Background of *P1 and P2 v D*

The case of *P1 and P2 v D* arose from a dispute between the first plaintiff and the second plaintiff (collectively, the **Plaintiffs**), and the defendant concerning an Investor Framework Agreement executed in 2017. P1 and P2 are a foreign national and a Hong Kong company respectively. The dispute was arbitrated in Hong Kong under the Hong Kong International Arbitration Centre (**HKIAC**) Rules.

In April 2023, the arbitral tribunal issued a Partial Final Award, ruling that the Plaintiffs had breached the IFA. The Plaintiffs subsequently filed an application to set aside the Partial Final Award under Section 81 of Arbitration Ordinance. D then filed an application for security for costs from the Plaintiffs.

Originally, D relied solely on Order 23 rule 1(1)(a) of the Rules of the High Court (Cap. 4, **RHC**) as its basis for applying for security for costs. However, since Order 23 rule 1(1)(a) of the RHC applies to plaintiffs ordinarily out of the jurisdiction, it does not apply to P2 being a Hong Kong company. D subsequently sought leave to amend its summons to also rely on Section 905 of the Companies Ordinance (Cap 622, **Companies Ordinance**), which governs both foreign and Hong Kong companies, in relation to P2.

Key Issues

The court had to consider two key propositions advanced by the Plaintiffs:

1. Whereas residence overseas is relevant in an application for security for costs under Order 23 rule 1 of the RHC, this rule should be displaced in the arbitration context, where the circumstances are evenly balanced, such that it would ordinarily be just not to order security for costs (the "**First Proposition**");
2. In an application for security for costs concerning arbitral proceedings, an order for security for costs will typically only be made where the defendant is *"likely to be impecunious"* (the "**Second Proposition**").

Court's Decision

The court granted D's application for security for costs against the Plaintiffs.

The court affirmed the decision of Mimmie Chan J in *SA v BH* [2024]

3 HKLRD 204 and emphasised the distinction between security for costs applications heard by courts during set-aside proceedings (which are court proceedings during the challenge phase) and security for costs applications heard by arbitral tribunal during the determination phase (which are arbitral proceedings). The court emphasised the distinct roles of arbitral tribunals and courts in the arbitral process, and found that policy considerations underlying section 56(2) of Arbitration Ordinance, which prohibits an arbitral tribunal from ordering security for costs against a foreign plaintiff on its foreign nature, do not apply to security for costs applications in set-aside proceeding. The latter is heard before the courts pursuant to Order 23 rule 1 of the RHC, in which being ordinarily resident outside Hong Kong is a ground for ordering security for costs against a plaintiff. As a result, different considerations apply.

First Proposition

The court rejected the Plaintiffs' arguments that the pro-arbitration policy of Hong Kong should weigh decisively against an order for security for costs; instead, the pro-arbitration policy of Hong Kong would mean that the court shall not allow a situation where a challenge of an award is made easier and more accessible to the party challenging the award, or a situation where it is more onerous for a party resisting such challenge. Challenges against arbitral awards under Section 81 of Arbitration Ordinance should be of an exceptional nature.

Thus, in deciding a security for costs application during the challenge phase under Order 23 rule 1 of the RHC, the Court will not adopt a "wholesale importation" of the rationale behind Section 56 of Arbitration Ordinance. In reaching this conclusion, the Court gave, *inter alia*, the following reasons:

1. **Asymmetry in Security for Costs Applications:** The court noted that Order 23 rule 1(1)(a) of the RHC applies asymmetrically, targeting foreign plaintiffs but not defendants. This asymmetry is justified by the practical difficulty of enforcing costs orders against foreign plaintiffs and the fact that defendants are merely defending themselves against claims initiated by plaintiffs. In the words of the judge, the Plaintiffs *"in seeking to set aside the Award, are plainly the real attackers."*
2. **Policy Considerations in Arbitration-Related Court Proceedings:** While Hong Kong's arbitration-friendly policy discourages arbitral tribunals from ordering security for costs based solely on foreign residency, the court did not follow Singapore's court approach in *Zhong Da Chemical Development Co Ltd v Lanco Industries Ltd* [2009] 3 SLR(R) 1017, and ruled that this rationale does not automatically extend to court proceedings during the challenge phase. The court emphasised the need to safeguard defendants from incurring unrecoverable costs in challenges to arbitral awards.
3. **Parties' Choice of Hong Kong as the Seat of Arbitration:** Since parties choose Hong Kong as the seat of the arbitration, it is natural that the full panoply of Hong Kong statutory framework and Hong Kong court procedural rules will apply when the court's jurisdiction is invoked in the challenge phase. In particular, since the parties have chosen not to opt-in for the provisions under Schedule 2 of Arbitration Ordinance, the considerations in Schedule 2 of the Arbitration Ordinance did not apply.

Second Proposition

The court rejected the Plaintiffs' argument that security for costs should only be ordered against a plaintiff who is demonstrably impecunious. The court clarified that the relevant consideration is the ease of enforcement of a potential costs order, not merely the plaintiff's financial condition.

Whether Security for Costs Should be Ordered

Given the lack of presence of P1 in Hong Kong, the lack of assets of P2 in Hong Kong and difficulties in enforcing an adverse costs order against P1, the court ordered security for costs against P1 and P2. The court placed emphasis on the ease of enforcement, and noted D's concerns (amongst others) that P1/P2 were cautious not to reveal details of P1's assets and wealth in the arbitral proceedings.

Conclusion and Comments

The decision of *P1 and P2 v D* provides welcoming clarity on Hong Kong court's approach to security for costs in award challenge proceedings. It demonstrates that while Hong Kong maintains its commitment to being an arbitration-friendly jurisdiction, this does not extend to making it easier for parties to challenge awards; rather, the court shall not create a situation where challenging an award is made easier or more accessible.

The emphasis on enforcement practicalities rather than mere impecuniosity provides a more nuanced framework for courts to consider security applications. This approach appropriately balances access to justice concerns with the need to protect successful parties from pyrrhic victories on costs.

The decision is a timely reminder of the court's pivotal role in balancing the interests of arbitration users and ensuring the fairness of the arbitral process. By confirming its jurisdiction to order security for costs against foreign plaintiffs, the Hong Kong Court has provided clarity on an important procedural issue while reaffirming its commitment to upholding Hong Kong's standing as a leading arbitration hub.

The decision highlights the importance of asset transparency in Hong Kong court proceedings. Parties seeking to resist security applications should be prepared to provide clear evidence about their assets and ability to satisfy potential costs orders.

It underscores the importance of ensuring that challenges to arbitral awards shall not become a tool for delaying enforcement without adequate safeguards.

Additionally, the decision serves as a practical reminder to arbitration practitioners in Hong Kong that they should be careful in stating the correct basis for applying for security for costs under the RHC and/or Companies Ordinance, to avoid the need in amending the summons and causing delay in seeking security.

KEVIN WARBURTON
Partner, Hong Kong
T +852 3983 7629
E kevin.warburton@hfw.com

CATRIONA HUNTER
Knowledge Counsel, Hong Kong
T +852 3983 7675
E catriona.hunter@hfw.com

CURTIS PAK
Associate, Hong Kong
T +852 3983 7659
E curtis.pak@hfw.com

Anson Cheung, Trainee Solicitor, Hong Kong assisted in the preparation of this article.

DAN PERERA
PARTNER, SINGAPORE

AARON TAN
ASSOCIATE, SINGAPORE

DMZ V DNA [2025] SGHC 31 – RESPECTING THE INSTITUTIONAL RULES

For any arbitral institution, the registrar plays a critical role in ensuring a fair, economic and expeditious arbitral process. In *DMZ v DNA* [2025] SGHC 31 (DMZ v DNA), the Singapore High Court (the Court) upheld the policy of minimal curial intervention in matters within the domain of arbitration, and refused to interfere with the registrar's role in the arbitral process, when a party sought to challenge a registrar's decision in arbitration proceedings.

Facts

In DMZ v DNA, the claimant sought permission of the Court (the **Permission Proceeding**) to commence proceedings (the **Substantive Proceeding**) against (i) the defendant; and (ii) the Registrar of the Singapore International Arbitration Centre (**SIAC**) (the **Registrar**), concerning the Registrar's decision in relation to the date of commencement of particular SIAC-administered arbitrations.

In this regard, the SIAC initially confirmed to the parties that the arbitrations had commenced on 3 July 2024. The respondent in the arbitrations (the Claimant in these Singapore High Court proceedings) argued that the commencement date was more than 6 years after the alleged dispute (i.e., when the sums allegedly became due under the sale contracts between the parties), thereby time-barring the dispute. After hearing the request of the claimant in the arbitration (the Defendant in these proceedings) for amendment, the SIAC accepted the request and revised the commencement date to 24 June 2024, the date on which the Claimant filed the Notices of Arbitration.

Issues

The Court found that the Claimant's application in the Permission Proceeding would turn on whether the Substantive Proceeding was "legally sustainable". To determine the same, the Court addressed two

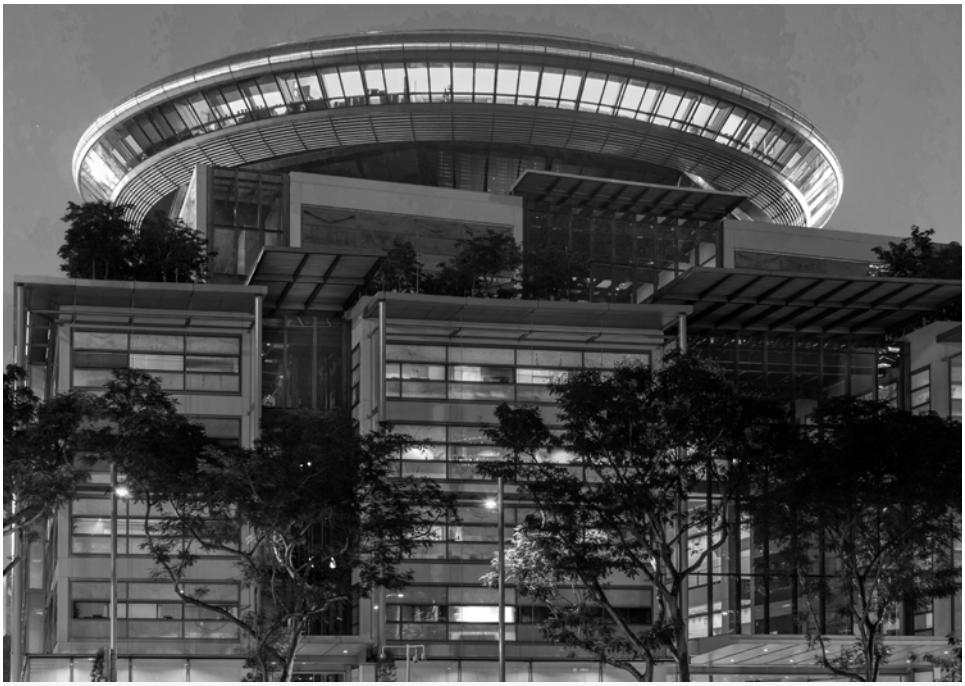
issues: (a) whether the Court had jurisdiction to review the Registrar's decision; and (b) whether there was legal merit to the Substantive Proceeding?

The Court held that it did not have the jurisdiction to review the Registrar's decision at this juncture

The Court dismissed the Permission Proceeding, ruling that: (a) it had no jurisdiction to review the Registrar's decision; and (b) in any event, there was no merit to the Substantive Proceeding.

On the first issue, the Court raised a preceding issue before it could address the Claimant's arguments. The Court found that Substantive Proceeding was brought in breach of Rule 40.2 of the 2016 SIAC Rules (which states: *"save in respect of Rule 16.1 and 28.1, the parties waive any right of appeal or review in respect of any decisions of...the Registrar"*). The Court deemed Rules 16.1 and 28.1 as irrelevant on the facts. In coming to this conclusion, the Court took the view that the legal relationship between the relevant parties was a contractual one, and that the SIAC was therefore contractually obliged to comply with the SIAC Rules in administering the arbitrations. The parties to such arbitrations would also be contractually bound by the same, having expressly agreed to adopt SIAC arbitration (and its prevailing Rules) as their dispute resolution forum of choice.

The Court disagreed with the Claimant's reference to *Sun Travels & Tours v Hilton International Manage (Maldives)* [2019] 1 SLR 372, and the Claimant's argument that the Court has wide-ranging powers to grant declaratory relief in respect of a Singapore-seated arbitration. The Court held that the case upholds a policy of minimal curial intervention, and that the Court's declaratory power is not unfettered. Additionally, the Court observed that the Substantive Proceeding was effectively a back-door appeal. The Court also recognised that the International Arbitration Act provides a basis for redress, i.e., through Art 34(2)(a)(iv) of the Model Law. It made no difference that the arbitration proceedings would have to be completed first, as the Claimant incorrectly argued. Therefore, in failing to abide by the SIAC Rules, the Substantive Proceeding was an abuse of process.



On the second issue, the Claimant argued that the Registrar acted wrongfully in issuing the revision of the commencement date, because the Registrar breached Rule 40.1 of the SIAC Rules, which provides that the Registrar's decisions are conclusive and binding.

The Court rejected the argument on four grounds. First, the Court disagreed with the Claimant's interpretation that Rule 40.1 prohibits the Registrar from reviewing or reconsidering his own decisions (as compared to the decisions being binding upon the parties to the arbitration proceedings and the Tribunal). Secondly, the Court held that the Registrar's decisions are administrative in nature, and such decisions can plainly be reconsidered. If a Tribunal is entitled to reconsider administrative decisions, an arbitral institution should be entitled to do the same. The principle of finality as raised by the Claimant was inapplicable upon the facts. Thirdly, allowing the Registrar to reconsider his own decisions would also be fair, expeditious and economical for parties as fortified by Rule 41.2. Lastly, the Court held that the SIAC Rules must be understood in the context of the IAA, which adopts specific language where it is intended for a particular decision not to be reviewed, corrected or amended.

Commentary

The decision in *DMZ v DNA* is an important decision as it clarifies that in Singapore, arbitral institutions are contractually obliged to comply with their own rules in administering arbitrations. In this regard, parties would need to be mindful that when they agree to a particular institution, the institution is also bound to follow the established applicable rules.

Additionally, parties should be aware that attempts to bypass the institution and approach the Courts for relief, despite a prior decision, would likely be classified as nothing better than a "back-door appeal" as recognised by the Court in *DMZ v DNA*. This is an important consideration for parties in evaluating the most cost-efficient method in which to challenge a registrar's administrative decision. It is clear that mounting an early challenge before the Singapore Courts in relation to a decision of the SIAC Registrar is not appropriate at such an early juncture, and would only result in wasted costs.

DAN PERERA
Partner, Singapore
T +65 6411 5347
E dan.perera@hfw.com

AARON TAN
Associate, Singapore
T +65 6411 5367
E aaron.tan@hfw.com

HFW EVENTS AND SPEAKING ENGAGEMENTS

Upcoming

Julien Fouret is speaking at Paris Arbitration Week, Tuesday 8 April. He joins the panel "Cross-Pollination between Investor-State, WTO and Court of Arbitration for Sports Dispute Settlement Mechanisms".

Slava Kiryushin will be speaking at the 8th edition of Global Arbitration Review Live: Construction Disputes taking place on 10 April 2025 at Hôtel du Collectionneur, Paris. He is speaking on "Whose line is it anyway – Should expert reports signed by two or more testifying experts be allowed?".

Previous

We kicked off our 2025 Arbitration Webinar Series on 6 March with an insightful session on "The Use of AI and Emerging Technologies in Arbitration". HFW's Dan Perera and Sadhvi Mohindru were joined by Kelly Forbes, President of the AI Asia Pacific Institute, and Thara Gopalan, Vice President of the International Centre for Dispute Resolution® (ICDR).

We are delighted to have sponsored the Thailand & SE Asia: 6th International Arbitration Summit which took place in Bangkok on 6 March. The summit was a resounding success, featuring an eminent lineup of local and international speakers who discussed emerging trends and provided valuable updates to help businesses navigate arbitration, as well as sharing practical tips. See more here.

We co-hosted a seminar with 4 Pump Court on 27 February, "Arbitration Across our Industry Groups: Shipping, Commodities, Energy, Insurance and Construction". The Riyadh International Disputes Week event was a great success with an engaged audience. See more here.

TEAM HIRES AND PROMOTIONS

New additions

- Sinyee Ong, Legal Director, Singapore

Promotions

We are pleased to announce several promotions within the HFW International Arbitration team, effective 1 April 2025:

- Alix d'Arjuzon, Partner, Brussels
- Anas Al-Tarawneh, Partner, Kuwait
- Thilo Jahn, Partner, Shanghai
- Jonathan Goulding, Legal Director, London
- Thomas Neighbour, Legal Director, Dubai
- Jack Metherell, Senior Associate, London
- Konstantinos Kofopoulos, Senior Associate, Piraeus
- Ryan Craft, Senior Associate, Perth

Read more on **hfw.com**: HFW continues growth with Partner and Legal Director promotions | HFW announces Senior Associate promotions across core sectors and international network.

HFW international arbitration contacts

DAMIAN HONEY
Head of IA, Partner, London
T +44 (0)20 7264 8050
E damian.honey@hfw.com

NICOLA GARE
Knowledge Counsel, London
T +44 (0)20 7264 8158
E nicola.gare@hfw.com

NICK LONGLEY
Partner, Melbourne
T +61 (0)3 8601 4585
E nick.longley@hfw.com

JO DELANEY
Partner, Sydney
T +61 (0)2 9320 4621
E jo.delaney@hfw.com

PETER SADLER
Partner, Perth
T +61 (0)8 9422 4702
E peter.sadler@hfw.com

KEVIN WARBURTON
Partner, Hong Kong
T +852 3983 7629
E kevin.warburton@hfw.com

PETER MURPHY
Partner, Hong Kong
T +852 3983 7700
E peter.murphy@hfw.com

NICK BRAGANZA
Partner, Dubai
T +971 4 423 0587
E nick.braganza@hfw.com

SAM WAKERLEY
Partner, Dubai
T +971 4 423 0530
E sam.wakerley@hfw.com

DAN PERERA
Partner, Singapore
T +65 6411 5347
E dan.perera@hfw.com

VINCENT BÉNÉZECH
Partner, Paris
T +33 (0)1 44 94 31 52
E vincent.benezech@hfw.com

ADAM STRONG
Partner, London
T +44 (0)20 7264 8484
E adam.strong@hfw.com