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Newsletter

International Arbitration

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What's inside?

Court confirms high threshold for setting aside arbitral awards

Joseph Chung

In LY v HW, HCCT 96/2021 [2022] HKCFI 2267, the court dismissed the Plaintiff's application to set aside an arbitral award on the ground that the arbitral tribunal had failed to deal with key issues put before it and/or had failed to provide sufficient reasons for its decisions on key issues. The court emphasized that an arbitral award has to be read in the context of the submissions and arguments made to the tribunal and that the court will be extremely slow to interfere with the tribunal's decision as to which issues are essential and necessary to be addressed in the award. So long as the tribunal sets out its decision on the dispute and gives sufficient reasons why it came to its particular decision, the parties are bound by the award.

The Parties

The Plaintiff (LY) and Defendant (HW) entered into a Distribution Agreement (Agreement), which LY terminated on the ground that HW had failed to achieve the annual growth rate target agreed, in that the annual sales value (ASV) was lower than that agreed.

Arbitration Proceedings

HW disputed the termination and commenced arbitration proceedings, seeking a declaration that LY was in breach of the Agreement and that its purported termination was invalid. In the arbitration, HW put forward various contentions in relation to the calculation of the ASV figure, one being that HW had met the ASV target, as certain rollover sales volumes from the previous year should have been included in the calculation. LY relied on another calculation of the ASV. Hence, the parties were in dispute about how the ASV should be calculated under the Agreement and whether the ASV target had been met.

If LY's calculation of the ASV was not accepted by the tribunal, the purported termination of the Agreement would have been wrongful, LY would have been in breach of the Agreement and be liable for the damages sought by HW.

LY's application to set aside arbitral award

The tribunal found in HW's favour. LY applied to set aside the award on the ground that (i) the arbitral procedure was not in accordance with the parties' agreement, in that the tribunal failed to deal with all key issues put before it, and/or

had failed to provide sufficient reasons for its decisions on the key issues; and (ii) the award was in conflict with the public policy of Hong Kong.

According to LY, the tribunal failed in its award to deal with three issues which had expressly been drawn to the tribunal's attention, which issues were integral to the resolution of the parties' dispute concerning the Rollover Arrangement relied on by HW for its calculation of the ASV under the Agreement. Further, that the reasons provided by the tribunal in the award were insufficient to enable the parties to understand the legal basis on which it had found against LY on the Rollover Arrangement issue, which amounted to a departure from the parties' agreed arbitral procedure, was a denial of process, and hence in conflict with the public policy of Hong Kong and therefore the award should be set aside.

Legal Principles

The court referred to the relevant legal principles as follows:

(1) S.67 of the Arbitration Ordinance applies Article 31 of the Model Law. Article 31(2) provides that an award shall state the reasons upon which it is based, unless the parties have agreed that no reasons are to be given.

(2) The grounds for setting aside and refusal of enforcement of an award are to be construed narrowly, and the applicant has to show that that the error complained of is egregious, to warrant the setting aside of the award.

(3) In determining whether the ground of the tribunal's failure to deal with all issues is established, there has to be an 'issue' which has been put to the tribunal, and it has to be shown that the tribunal failed to deal with the issue and that such failure has caused substantial injustice.

(4) The tribunal does not have to set out each step by which it reaches its conclusion, and a tribunal's decision on an issue without giving reasons does not constitute failure to deal with it.

(5) In considering whether a tribunal has dealt with an issue, the approach is to read the award in a reasonable and commercial way, without a meticulous legal eye endeavouring to pick holes, inconsistencies and faults, but generously, and only to remedy serious breaches of natural justice which cause injustice.

(6) The award should not be read in a vacuum. It has to be read in the context of the submissions and arguments made to the tribunal. The question is whether, properly understood, the award has dealt with an issue which is key to the tribunal's decision on the dispute referred to it in the arbitration. The tribunal is only required, under Article 31(2), to state the reasons upon which the award is based.

(7) It suffices that the tribunal should clearly state its determination on the essential questions in dispute, and explain the reasons it came to the decision on the dispute. The reasons do not have to be elaborate or lengthy, as the award must be read against the context as to how issues had been argued before the tribunal, and an award is the result of a private consensual process.

(8) It is particularly important for the court to bear in mind the object and principles of the Arbitration Ordinance, namely to facilitate the fair and speedy resolution of disputes by arbitration without unnecessary expense, that parties to a dispute should be free to agree on how their dispute should be resolved and that the court should interfere in the arbitration of the dispute only as expressly provided for in the Arbitration Ordinance; all in accordance with and to reflect the policy of minimal judicial intervention into the arbitral process.

(9) An inference will not be made that a tribunal has failed to consider an important issue, unless such inference is clear and virtually inescapable.

(10) The tribunal is not bound to structure its decision and its reasons in accordance with the issues put to and argued before the tribunal or the submissions made by the parties.

(11) In deciding whether the tribunal has adequately dealt with an issue, or sufficiently explained its decision, the court must be circumspect in its consideration of the award to avoid any attempt to review the correctness of the award, in law or on facts.

(12) Parties to an arbitration do not have a right to have all their arguments addressed by the tribunal. The court would be extremely slow to interfere with the tribunal's decision on which issues are essential and necessary to be addressed in the award. So long as the tribunal sets out its decision on the dispute and gives sufficient reasons why it came to its particular decision, the parties are bound.

(13) Any error in an award made by an arbitrator cannot by itself counterbalance the public policy bias towards enforcement of arbitration agreements and awards.

Court's Decision

The court said that in order to decide on the relevance of the issues in question and whether they had been dealt with by the tribunal and, if not, the consequences of such failure, it was necessary for it to consider what was the determination made in the award and how the tribunal came to its decision. After considering such, the court concluded that the tribunal's failure to consider or deal with issues or aspects of the submissions made on behalf of LY in this case, was a matter which went to the tribunal's substantive decision, which may amount to an error or law, but was not a ground for challenging the award.

Reading the award, the court was not satisfied that this was a case where the tribunal's failure to deal with the issues complained of by LY was not due to the tribunal's choice of not dealing with aspects of the submissions made for LY, because the tribunal considered it unnecessary to do so by reason of the issues it had dealt with and decided.

The court said that parties to an arbitration do not have the right to have all their arguments addressed by the tribunal and the court should be extremely slow to interfere with the tribunal's decision on which issues are essential and necessary to be addressed in the award. So long as the tribunal sets out its decision on the dispute and gives sufficient reasons why it came to its particular decision, the parties are bound. No party, the court said, is entitled to apply to the court to repeat its arguments or make further submissions to seek an outcome which enables it to avoid an unfavourable award.

The court concluded that even if the tribunal had not dealt with the particular issues complained of by LY, there was no serious or egregious error justifying the setting aside of the award, whether on the ground of arbitral procedure or public policy.

LY has subsequently been granted leave to appeal the decision. The court said that in arguing that the court had misconstrued the Award and the Tribunal's conclusion on the issues to be dealt with expressly, it could not be said that the intended appeal had no reasonable prospect of success, which is not a very high threshold –the prospects of the intended appeal do not have to be probable and in this case, the court said, they could be said to be more than fanciful.

Comment

This judgment reinforces the court's pro-arbitration stance and makes it clear that any error in an award made by an arbitrator cannot by itself counterbalance the public policy bias towards enforcement of arbitration agreements and awards. Further, the court will rarely interfere with the tribunal's decision on which issues are essential and necessary to be addressed in the award and it is sufficient that the tribunal sets out its decision on the dispute and gives sufficient reasons why it came to its particular decision.

During the course of the hearing, counsel for the parties may raise various arguments, whether they are relevant to the key issues or not. If the tribunal is required to address all such arguments, it may render the task of the tribunal unduly daunting, if not impossible.

Are arbitral tribunal decisions re non-compliance with procedural pre-arbitration conditions reviewable by the court?

KK Cheung

In C v D, CACV 387/2021[2022] HKCA 729, the principal issue to be determined on appeal was whether an arbitral tribunal's determination that a pre-arbitration procedural requirement in an arbitration agreement (that the parties should first attempt to resolve their dispute by negotiation) had been fulfilled, is subject to recourse to the court under Article 34(2)(a)(iii) or (iv) of the UNCITRAL Model Law. The Court of Appeal, upholding the decision of the court below, held that it is not. This judgment is important, as multi-tiered dispute resolution clauses are not uncommon, and the question of the proper approach to an application to set aside an arbitral award on the ground that certain prior requisite steps envisaged by such clause have not been undertaken and that the arbitral tribunal consequently lacks jurisdiction, is a subject matter of some general significance to arbitration law in Hong Kong.

The Parties

The Plaintiff (C) is a Hong Kong company, carrying on business as an owner and operator of satellites. The Defendant (D) is a Thai company, carrying on business as a satellite operator in the Asia Pacific region.

The dispute resolution clause

C and D entered into an Agreement which contained, the following dispute resolution provision:

> *"[14.1] Governing Law. This Agreement shall be governed by, and construed in accordance with, the laws of Hong Kong, without regard to the principles of conflicts of law of any jurisdiction.*
>
> *[14.2] Dispute Resolution. The Parties agree that if any controversy, dispute or claim arises between the Parties out of or in relation to this Agreement, or the breach, interpretation or validity thereof, the Parties shall attempt in good faith promptly to resolve such dispute by negotiation. Either Party may, by written notice to the other, have such dispute referred to the Chief Executive Officers of the Parties for resolution. The Chief Executive Officers (or their authorized representatives) shall meet at a mutually acceptable time and place within ten (10) Business Days of the date of such request in writing, and thereafter as often as they reasonably deem necessary, to attempt to resolve the dispute through negotiation.*
>
> *[14.3] Arbitration. If any dispute cannot be resolved amicably within sixty (60) Business days of the date of a Party's request in writing for such negotiation, or such other time period as may be agreed, then such dispute shall be referred by either Party for settlement exclusively and finally by arbitration in Hong Kong at the Hong Kong International Arbitration Centre … in accordance with the UNCITRAL Arbitration Rules in force at the time of commencement of the arbitration …*
>
> *(e) Any award made by the arbitration tribunal shall be final and binding on each of the Parties that were parties to the dispute. To the extent permissible under the relevant laws, the Parties agree to waive any right of appeal against the arbitration award."*

D's CEO issued a letter to C's Chairman referring to breach of the Agreement (December Letter), a copy of which was passed on to C's CEO. There was no further correspondence from D and neither party referred the dispute to their respective CEOs with a view to resolving the dispute through negotiation. D issued a notice referring the dispute to arbitration. In response, C claimed that the arbitral tribunal did not have jurisdiction to entertain the dispute as there had been no request for negotiation.

Arbitration

An arbitral tribunal was formed, which decided to deal with C's objection on jurisdiction and the issue of liability together, leaving the issue of quantum to be addressed, if necessary, at a later stage. After a hearing, the Tribunal issued a Partial Award, finding in D's favour. In relation to the issue of jurisdiction, the Tribunal held that the first sentence in Clause 14.2 mandatorily required the parties to attempt in good faith to resolve any dispute by negotiation, but the referral of the dispute to the respective CEOs mentioned in the second sentence of Clause 14.2, was optional. The Tribunal further held that the condition in Clause 14.3, i.e. the dispute could not be resolved within 60 business days of a party's request in writing for such negotiation, referred to a request for negotiation under the first sentence of Clause 14.2, and that condition had been fulfilled by D by the December Letter. The Tribunal accordingly rejected C's objection on jurisdiction, and proceeded to find that C was in breach of the Agreement and liable to pay damages to D in an amount to be assessed.

CFI Judgment

C issued an originating summons seeking a declaration that the Partial Award was made without jurisdiction and was not binding on C, and an order that the Partial Award be set aside under s.81 of the Arbitration Ordinance (which refers to Article 34 of the UNCITRAL Model Law). Under Article 34, a court can set aside an arbitral award if it deals with a dispute not contemplated by or not falling within the terms of the submission to arbitration (Article 34(2)(a)(iii)) or the composition of the arbitration tribunal or the arbitral procedure was not in accordance with the parties' agreement (Article 34(2)(a)(iv)).

The judge identified two questions which arose for consideration, namely: (i) The primary question: is the question whether D complied with the dispute resolution procedure set out in Clause 14.2 of the Agreement a question of the admissibility of the claim, or a question of the tribunal's jurisdiction, and does that question fall within s.81(1); (ii) The secondary question (only if the primary question is answered in C's favour): what is the condition precedent to arbitration on the proper construction of the Agreement, and was the condition fulfilled by the December Letter?

The judge held; (i) the court may review the Tribunal's decision on the standard of "correctness" and decide the question *de novo* if the question of whether D complied with the dispute resolution procedure set out in Clause 14.2 is a true question of "jurisdiction" properly falling within Article 34; (ii) the distinction between "jurisdiction" and "admissibility" is recognized both in court decisions in the United Kingdom, Singapore and United States, as well as in various academic works; (iii) although the Arbitration Ordinance does not in terms draw a distinction between jurisdiction and admissibility,

it may properly be relied upon to inform the construction and application of s.81;(iv) C's objection in the present case was one going to the admissibility of the claim, rather than the jurisdiction of the arbitral tribunal, and as such, the objection did not fall under Article 34(2)(a)(iii);(v) neither was Article 34(2)(a)(iv) applicable to C's objection, because that provision concerns the way in which the arbitration was conducted, but not contractual procedures *preceding* the arbitration, or pre-arbitration dispute resolution procedures, such as those provided in the Agreement. Having reached the conclusion that C's objection did not fall within either Article 34(2)(a)(iii) or (iv), it became unnecessary to deal with the secondary question.

Court of Appeal decision

The Court of Appeal upheld the decision of the court below. It referred to the substantial body of judicial and academic jurisprudence which supports the drawing of a distinction between jurisdiction and admissibility for the purpose of determining whether an arbitral award is subject to *de novo* review by the court under Article 34(2)(a)(iii), and the view that "non-compliance with procedural pre-arbitration conditions, such as a requirement to engage in prior negotiations, goes to admissibility of the claim rather than the tribunal's jurisdiction".

The court said there is much to be said for recognising the distinction between admissibility and jurisdiction for the purpose of Article 34(2)(a)(iii). Such an approach would (i) likely give effect to the agreement of the parties who, "as rational businessmen, are likely to have intended any dispute arising out of their relationship … to be decided by the same tribunal", (ii) be in line with the general trend of minimizing the permissible scope of judicial interference in arbitral procedures and awards, (iii) further the object of the Arbitration Ordinance i.e. "to facilitate the fair and speedy resolution of disputes by arbitration without unnecessary expenses", and (iv) ensure that Hong Kong does not fall out of line with major international arbitration centres like London or Singapore.

The court said that while the distinction between jurisdiction and admissibility cannot be written directly into Article 34(2)(a)(iii), it can be given proper recognition through the route of statutory construction, namely, that a dispute which goes to the admissibility of a claim rather than the jurisdiction of the tribunal should be regarded as a dispute "falling within the terms of the submissions to arbitration" under Article 34(2)(a)(iii). It added that it is important to emphasise that the distinction between admissibility and jurisdiction is ultimately controlled by the agreement of the parties, because arbitration is consensual and it is the parties' agreement which determines the true scope of the disputes which may be submitted to arbitration.

Accordingly, the Partial Award was not open to review by the court and the appeal was dismissed. C's subsequent application for leave to appeal to the Court of Final Appeal was also dismissed.

Comment

The Court of Appeal confirms our analysis of the differences between admissibility and jurisdictional challenges in our previous articles dated 4 August 2021 and 7 February 2022.

How does the court decide whether a matter is the subject of an arbitration agreement?

Justin Yuen

In 李明實，方壘 AND 史洪源 & Ors v Ace Leads profits Ltd & Ors, HCA 597/2021 [2022] HKCFI 3342, the Defendants' applied for an order that the action be stayed and referred to arbitration. One of the grounds relied on was that certain claims in the action (Trust Shares Claim) were within the ambit of the Arbitration Agreement in the Declarations of Trust (DoTs). The court held that in substance, the focus of the dispute between the parties in respect of the Trust Shares Claim was the existence of the Overarching Trust and was different in nature from the DoTs created by the DoTs in implementation of the Trust Scheme, and was outside the ambit of the Arbitration Agreement. Accordingly, the Defendants' application was dismissed. The court said that in terms of approach, when determining whether a particular matter is the subject of an arbitration agreement, the court should consider the substance of the controversy as it appears from the evidence and not just in the particular terms of how the claimant has formulated its claim in the pleadings.

The disputes centered around Declarations of Trust (DoTs) which contained the following preamble (DoT Preamble), that: "根據香港信託法例，特別是《受託人法例》及其他成文法或不成文法信託權法例，本合約各方自願遵守上述法律，並在上述法例保護之框架內，達成對合約信託的一致理解和一致遵守。" Clause 8.5 of the same (Clause 8.5) provided that: "本合約以香港法例為准據法，信託人與受託人之間信託關係的任何爭議在調解無效時，均有權提交

香港仲裁委員會裁決。" It was the Defendants' case that Clause 8.5 constituted an arbitration agreement (Arbitration Agreement).

The applicable legal principles

The court referred to the applicable legal principles, namely:

(1) The starting point is s.20(1) of the Arbitration Ordinance, Cap 609 (Article 8 of the UNCITRAL Model Law), which provides that: "*A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration unless it finds that the agreement is null and void, inoperative or incapable of being performed*."

(2) The court asks 4 questions:

Question 1: is there an arbitration agreement between the parties?

Question 2: Is the arbitration agreement capable of being performed, in the sense that it is not null and void, inoperative or incapable of being performed?

Question 3: Is there in reality a dispute or difference between the parties?

Question4: Is the dispute or difference between the parties within the ambit of the arbitration agreement?

(3) The onus is on the applicant for a stay to demonstrate that there is a prima facie case that the parties are bound by an arbitration clause, and unless the point is clear, the court should not attempt to resolve the issue and the matter should be stayed in favour of arbitration, as it is for the tribunal to decide first on its jurisdiction.

Was there an arbitration agreement between the parties?

The court referred to the two limbs to this question: (i) whether an arbitration agreement is in existence, and (ii) between whom. On the facts of this case, the court held that there was an arbitration agreement between the parties.

Was the Arbitration Agreement capable of being performed?

The Plaintiffs argued that the Arbitration Agreement was not capable of being performed because of the non-fulfilment of a "precondition"; and the non-existence of "香港仲裁委員會".

Was any "precondition" not fulfilled?

The Plaintiffs argued that according to the wording of Clause 8.5, the parties' entitlement to submit the dispute to arbitration arose only when mediation is ineffective (在調解無效時). However, the court rejected this as a matter of law. It said this was not supported by authorities and the question of whether a party has complied with the procedure or conditions as to the exercise of the right to arbitrate, as set out in an arbitration agreement, is a question of admissibility of the claim, and the court has no role to play in relation to such a question, as it does not go to the question of the jurisdiction of the tribunal. It is for the tribunal to decide on admissibility and such decision of the tribunal is final, and not for review by the court.

Non-existence of "香港仲裁委員會"

The fact that there was no arbitration body which bears that name was not in dispute. The court said there are two direct authorities in Hong Kong (*Lucky-Goldstar International (H.K.) Ltd v Ng Moo Kee Engineering Ltd* [1993] 1 HKC 404 and *Chimbusco International Petroleum (Singapore) PTE Ltd v Fully Best Trading Ltd* [2016] 1 HKLRD 582) that where the parties have clearly expressed an intention to arbitrate, the agreement is not nullified even if they chose the rules of a non-existent organisation.

The court found that the intention to arbitrate had objectively been clearly expressed and evinced in Clause 8.5 and it was not nullified by the non-existence of "*香港仲裁委員會*". Accordingly, the court concluded that the Arbitration Agreement was capable of being performed.

Was there a dispute between the parties?

The court said there *were* disputes between the parties. The writ had been issued, and the Statement of Claim filed. The Plaintiffs argued that the Defendants had not revealed their defences. The court said that it saw no need to go to any

detail of the evidence and the Defendants had sufficiently countered the Plaintiffs' submissions in this regard by referring to and relying on the observations of Ma J in *Tommy CP Sze & Co v Li & Fung (Trading) Ltd & Ors* [2003] 1 HKC 418, that: "*Prior to the enactment of the present section 6 of the Ordinance and Article 8 of the Model Law, the court's approach had been that proceedings would only be stayed (and the relevant dispute or difference referred to arbitration) if a genuine dispute existed between the parties. A genuine dispute was one in which there was a substantial or arguable defence to the claim brought by the Plaintiff in the action. That is no longer the law. A dispute will exist unless there is a clear and unequivocal admission not only of liability but also of quantum."*

Was the parties' dispute or difference within the ambit of the Arbitration Agreement?

The Plaintiffs argued that the Trust Shares Claim related to the Overarching Trust and was different from the DoT Trusts created by the DoTs, which only implemented the Trust Scheme. They said the Arbitration Agreement was contained in the DoTs, and covered only the disputes arising from the trust relationship between the trustees and individual beneficiaries under the DoTs. The Overarching Trust being the dispute between the parties in the Trust Shares Claim, its ambit was therefore outside the Arbitration Agreement. The Defendants argued that a disciplined approach should be adopted and the Plaintiffs' case as pleaded in the Statement of Claim should be looked at and that the Plaintiffs' contention that the claims were not based on the DoTs and therefore not subject to the Arbitration Agreement were contrary to the Plaintiffs' pleaded case.

The court agreed with the Plaintiffs. It said in terms of approach, when determining whether a particular "*matter*" is the subject of an arbitration agreement, the court should consider the substance of the controversy as it appears from the circumstances and evidence, and not just the particular terms in which the claimant has sought to formulate its claim in court. The focus is on the substance of the dispute, and not the pleadings.

The court concluded that in substance, the focus of the dispute in respect of the Trust Shares Claim was the existence and nature of the Overarching Trust and was different in nature from the DoT Trusts created by the DoTs in implementation of the Trust Scheme, and was outside the Arbitration Agreement. Accordingly, the Defendants had failed to discharge the onus on them to establish that the relevant dispute was within the ambit of the Arbitration Agreement and the Defendants' application to stay the Trust Shares Claim was dismissed. The Defendants' application for leave to appeal this decision was also dismissed.

Comments

This case is a useful reminder to arbitration practitioners of the proper step-by-step approach in considering an application for a stay of proceedings to arbitration.

HKIAC 2022 statistics

Carmen Ng

The HKIAC has published its statistics for 2022, which reveal that in 2022 it received a record number of arbitration filings (the highest number received in over a decade).

The following are some of the more notable statistics:

- **No. of arbitrations:** 515 cases were submitted to the HKIAC in 2022. Of those, 344 were arbitration filings (as compared to 277 in 2021), 161 were domain name disputes (as compared to 225 in 2021) and 10 were mediations (as compared to 12 in 2021).

- **Rules:** Of the 344 arbitrations, 256 were administered by the HKIAC under rules, including the HKIAC Administered Arbitration Rules and the UNCITRAL Arbitration Rules.

- **International:** 83.1% of all arbitrations submitted to the HKIAC in 2022 were international in nature i.e. at least one party was not from Hong Kong. 93.4% of the administered arbitrations commenced in 2022 were international cases.

- **Amount in dispute:** The total amount in dispute across all arbitrations was HK$43.1 billion. The total amount in dispute in all administered cases was HK$36.7 billion and the average amount in dispute in administered arbitrations was HK$180.6 million.

- **Seat of arbitration:** The vast majority of arbitrations (97.7%) were seated in Hong Kong. In the remaining arbitrations, the seat was England & Wales or not specified.

- **Governing laws:** Disputes referred to the HKIAC in 2022 were subject to 16 different governing laws, with Hong Kong law being the most commonly selected governing law, followed by English law and then Jersey law.

- **Types of dispute:** The most common types of dispute were banking and financial services (36.9%), corporate (17.7%), international trade/sale of goods (14%), maritime (12.5%) and construction (9.9%).

- **Challenges to arbitrators:** 11 challenges to arbitrators were submitted to the HKIAC in 2022, 1 of which was dismissed, 1 resulted in resignation of the challenged arbitrator and 9 are pending.

- **Multi-party or multi-contract arbitration, joinder and consolidation:** Of the 344 arbitration filings in 2022, 183 involved multiple parties/ contracts. In 26 of those cases, a single arbitration was commenced under multiple contracts. The HKIAC received 10 requests for consolidation, 8 of which were granted and 2 rejected. 12 requests for joinder of additional parties were submitted to the HKIAC or arbitral tribunals, 9 of which were granted, 1 rejected and 2 are pending.

- **Interim Measures Arrangement:** A steadily growing number of parties made applications under the Hong Kong-Mainland China Arrangement on interim measures. In 2022, the HKIAC processed 26 applications to 14 different Mainland Chinese courts under the Arrangement, seeking to preserve evidence, assets or conduct, worth a total of RMB7.6 billion in Mainland China. In respect of those applications, the Mainland courts issued orders to preserve RMB1.26 billion worth of assets. Approximately 17.2% of the applications were made by parties from Mainland China and 82.8% by parties from Hong Kong, Singapore, Cayman Islands, Germany, Australia and the BVI. Approximately 68.9% of the applications concerned assets owned by Mainland Chinese parties and 31.1% concerned assets or evidence owned by non-Mainland parties. Since the Interim Measures Arrangement came into force on 1 October 2019, the HKIAC has processed 86 applications. 81 applications were made for the preservation of assets, 2 for the preservation of evidence, and 3 for the preservation of conduct. The total value of assets requested to be preserved amounted to RMB22.9 billion. As of the end of 2022, the HKIAC is aware of 58 decisions issued by Mainland Courts. Of those, 54 granted the applications for preservation of assets upon the applicant's provision of security and 4 rejected such application. The total value of assets preserved by the 54 decisions amounted to RMB14.5 billion.

- **Emergency arbitrator applications:** 1 emergency arbitrator application was submitted to the HKIAC in 2022. The total number of emergency arbitrator applications filed with the HKIAC as at the end of 2022 is 32.

- **Expedited procedure:** 20 applications for the expedited procedure were submitted to the HKIAC in 2022, 16 of which were granted and 4 rejected.

- **Early determination procedure:** 2 applications for the early determination procedure were submitted to arbitral tribunals in 2022.

- **Third party funding:** Parties made disclosures of third party funding in 73 arbitrations administered by HKIAC under the 2018 HKIAC Administered Arbitration Rules and 1 arbitration administered by HKIAC under the UNCITRAL Arbitration Rules in 2022.

- **Virtual hearings:** In 2022, the HKIAC hosted a total of 93 hearings, of which 75 were fully or partially virtual and 18 in person at the HKIAC's premises in Hong Kong.

Justin Yuen appointed as member of HKIAC Appointment Advisory Board and reappointed as member of Panel of the Board of Review (Inland Revenue Ordinance)

We are delighted to announce that our Construction & Arbitration Partner, **Justin Yuen**, has been newly appointed by Hong Kong International Arbitration Centre as one of the Members of its Appointment Advisory Board for a term of three years. The Appointment Advisory Board aids the HKIAC in fulfilling its role as an appointing authority, as stipulated in Sections 23(3) and 24 of the Arbitration Ordinance (Chapter 609).

Justin has also been recently reappointed as a member of the Panel of the Board of Review (Inland Revenue Ordinance) for another term of three years. The Board is an independent statutory body in Hong Kong, constituted under section 65 of the Inland Revenue Ordinance (Cap 112) to hear and determine tax appeals.

Want to know more?

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