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**Insights**

# MINOR IRREGULARITY IN PARTY NAME NOT A VALID GROUND TO SET ASIDE AN ARBITRAL AWARD

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It sometimes happens that there is an irregularity or mistake in the way in which a party is named in the formal arbitration papers. Will such an irregularity or mistake cause problems when the successful party seeks to enforce the arbitral award? Is such a defective "naming" a good ground to prevent the enforcement?

In *A Consortium Comprising TPL and ICB v AE Limited* [2021] HKCFI 2341 (Date of Decision: 13 August 2021), the Applicant was the claimant, and the Respondent was the respondent, in an arbitration. The arbitral tribunal had found in favour of the Applicant. The court made an order granting leave to the Applicant to enforce the arbitral award, and the Respondent sought to set aside the enforcement order ("**Setting Aside Application**"). In the underlying agreement from which the arbitration sprang, the Applicant was named as the "Joint Venture" between TPL and ICB. In the arbitration and in the enforcement proceedings, the Applicant / claimant was named as "Consortium comprising TPL and ICB".

The gist of the Respondent's argument was that there was no such legal entity as either the "Joint Venture" or the "Consortium comprising TPL and ICB", and that the named entity had no recognised existence under Hong Kong law to commence proceedings to sue or be sued. The Respondent also relied upon the difference between the description "Joint Venture" in the underlying agreement and the description "Consortium" in the arbitration papers and enforcement proceedings.

In response to this complaint, the Applicant applied for leave within the enforcement proceedings to name the Applicant as the 1st Applicant, and to add TPL and ICB as 2nd and 3rd Applicants ("**Amendment Application**").

## Setting Aside Application

First, the Respondent argued that, given that the "Consortium comprising TPL and ICB" was not an incorporated or registered company, the Applicant was not a legal entity capable of suing and being sued and had no capacity to institute the proceedings to enforce the arbitral award. The enforcement proceedings therefore were unsustainable at law.

Secondly, the Respondent argued that the agreements from which the arbitration arose stated that the agreements were made between "the Joint Venture of TPL and ICV" and the Respondent. Therefore, the Respondent argued that the named Applicant in the enforcement proceedings (the "Consortium") was a different entity from the "Joint Venture" which entered into the agreements with the Respondent.

The Respondent submitted that enforcement of arbitral awards under the Arbitration Ordinance (Cap 609) ("Ordinance") should be as "mechanistic" as possible. Under section 84 of the Ordinance, where the court grants leave to enforce an arbitral award, judgment is entered "in terms of the award". Relying on this section, the Respondent submitted that the court only had jurisdiction to enter judgment in terms of the award, i.e. in favour of "A Consortium comprising TPL and ICB".

## Irregularity in the Applicant's name

Rejecting the Respondent's submissions, the court adopted a common sense and pragmatic approach.

The court pointed out that the arbitration had been commenced by the Request for Arbitration served in the name of the Applicant (namely, "A Consortium comprising TPL and ICB", being the claimant in the arbitration). The Answer and Counterclaim served by the Respondent (which also was the respondent in the arbitration) also referred to the Applicant as the Consortium comprising TPL and ICB, and did not complain that the Applicant was not a valid legal entity. The court therefore concluded that the Respondent was under no doubt or confusion as to the identity of the claimant in the arbitration.

In response to the Respondent's submissions that the court should be "mechanistic", the court focused on the spirit of the Ordinance which was to facilitate the enforcement of arbitration awards. The court opined that the natural and reasonable meaning as to the Applicant's identity was apparent from the arbitral award, and that there was no need to "go behind" the award to understand what it meant in order to identify the parties named in the award.

Applying ordinary principles on joinder of parties, the court allowed the Applicant's Amendment Application to join TPL and ICB as the 2nd and 3rd Applicants, thereby curing the defect or irregularity as to the capacity of the Applicant to commence the proceedings.

In light of the above, the court also granted leave to the 2nd and 3rd Applicants (i.e. TPL and ICB) to enforce the arbitral award.

## Takeaway points

This latest judgment is further confirmation that the Hong Kong courts adopt a common sense approach to the enforcement of arbitral awards, and generally are reluctant to set aside arbitral

awards due to technical errors or defects, such as in the party's name. This decision again demonstrates the pro-arbitration and pro-enforcement attitude of the Hong Kong courts.

To avoid potential arguments or disputes, parties to litigation or arbitration in Hong Kong should take common sense and prudent steps to ensure that the named parties are recognised entities under Hong Kong law and are capable of suing and being sued. On the other hand, if a party wishes to raise objection or dispute as to the legal status or correct name of a named party (including composite named parties), that party should raise the dispute with the court/tribunal sooner rather than later. Failing to raise the despite or objection at an early date might prejudice that party who might find itself barred from raising the dispute or objection at a later stage.

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## MEET THE TEAM


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