

Insights

HK COURT GRANTS WORLDWIDE MAREVA AND APPOINTS INTERIM RECEIVERS IN AID OF ENFORCING ARBITRAL AWARDS

May 19, 2025

In *周惠明 v 挪信新能源科技 (南通) 有限公司* [2025] HKCFI 1503^[1], the Hong Kong Court of First Instance ordered (a) that worldwide *Mareva* injunctions be continued, and (b) that interim receivers be appointed over the assets of the respondent and of a third party who held assets on the respondent's behalf.

BACKGROUND

The applicant was the creditor and the respondent was the debtor under four arbitral awards. Leave already had been granted to enforce the awards.

Existing worldwide *Mareva* injunctions were in place against the respondent and a related third party who held assets on the respondent's behalf.

Due to the respondent's failure to disclose its assets and the risk that the respondent would dissipate its assets, the applicant applied to the court to (a) continue the existing worldwide *Mareva* injunctions against the respondents and against the third party on the *Chabra* basis^[2], and (b) appoint interim receivers in support of the *Mareva* injunctions.

CONTINUING THE MAREVA INJUNCTIONS

During the proceedings, the respondent decided not to pursue its application to set aside the enforcement of the awards. As such, the court accepted that the present proceedings were within the "*post-judgment territory*", meaning that (a) it is no longer necessary for the court to consider the underlying merits of the arbitral awards, and (b) the risk of dissipation more easily will be inferred.

In deciding to continue the *Mareva* injunctions against the respondent and the third party, the court took into consideration the following:

1. The respondent "*consciously failed*" to inform the applicant about crucial information regarding the respondent's assets, which the court said amounted to conduct falling "*below the acceptable*

standard of commercial morality'. Even if the respondent merely made a genuine mistake, that demonstrated the respondent's cavalier attitude in dealing with its own assets, which was an additional factor favouring the contention that there was a risk of dissipation.

2. There was evidence of actual dissipation of assets when two of the respondent's corporate vehicles ("the two companies") were gratuitously transferred to the third party's nominee for nominal or no consideration.
3. The respondent's disclosure of its assets was incomplete and contained false information. The court therefore believed that it was likely that the respondent in fact maintained other assets which had not been disclosed to the court and the applicant.
4. The two companies were required by statute to comply with their obligations to disclose basic corporate documents (such as the register of members), but they had failed to do so.

The above factors led the court to the view that there was a genuine risk of dissipation. The court therefore made an order to continue the worldwide *Mareva* injunctions until further order of the court.

CHABRA INJUNCTION AGAINST THE THIRD PARTY

As the court has summarised, the *Chabra* jurisdiction (i.e. interim freezing order against third parties) will be exercised if there is "*good reason*" to suppose that assets in the name of a third party could be used to satisfy a judgment, for example where there is good reason to suppose assets in the name of third parties are in truth the assets of the respondent.

The court held that, after considering the facts of the present case, there indeed was a case to suggest that the third party was a nominee holding his interest in the two companies on behalf of the respondent.

The court therefore exercised its discretion to grant a *Chabra* injunction over the third party's interest in the two companies.

APPOINTMENT OF INTERIM RECEIVERS AND TERMS OF APPOINTMENT

The court also agreed to grant an interim receivership order over both the respondent's and the third party's assets. The key reasons of the court were as follows:

1. The applicant was a judgment creditor of the respondent under the arbitral awards and leave already had been granted to enforce these awards.
2. The existing worldwide *Mareva* injunctions had been granted against the respondent (and the third party under the *Chabra* jurisdiction). However, these existing injunctions were insufficient to

guarantee preservation of the respondent's (and the third party's) assets for the enforcement of the awards, which meant that the appointment of receivers was warranted to give sufficient protection to the applicant.

3. The court was likely to exercise its equitable jurisdiction to appoint receivers to collect judgment debt as part of the execution of the arbitral awards (e.g. through a charging order). As such, it was just and convenient that receivers be appointed in the interim to assess and preserve the value of the respondent's assets.
4. A receivership order also was made against the third party in respect of his interest in the two companies, given that there was a strong risk of assets being transferred away from the third party.
5. The respondent also failed to respond to the requests from the Special Managers (appointed to investigate into the respondents' assets) for information regarding the respondent's assets. The respondent's stated inability to assemble the requisite information regarding their own assets (even though some of the information can be found in the public domain) reinforced the need to appoint receivers.

As to the terms of the appointment of the interim receivers, the court reiterated that receivers can be appointed over assets abroad, as long as the respondent personally is within the jurisdiction of the court. The court also stressed that it was important that the powers to be given to the interim receivers should be drafted "*broadly*" because a receiver derives all his powers from the appointment order and does not have any inherent powers.

TAKEAWAY POINTS

This present case demonstrates Hong Kong courts' robust and pro-enforcement attitude regarding arbitral awards. This includes, in appropriate cases, granting injunctions and appointing receivers against both the judgment debtor or any third party who holds assets on behalf of the judgment debtor, in order to preserve a judgment debtor's assets for the purposes of ensuring that an arbitral award can be enforced.

In particular, where there is risk of the judgment debtor's assets being dissipated, Hong Kong courts are willing to use their wide powers to minimise the risks that arbitral awards become empty awards.

[1] Date of judgment: 29 April 2025

[2] A *Chabra* injunction is a freezing injunction over the assets of a third party against whom the claimant has no direct cause of action. This name is derived from the English case of *TSB Private*

Bank International SA v Chabra [1992] 1 WLR 231, and the test for a *Chabra* injunction is reaffirmed in the Hong Kong Court of Appeal case in *XY, LLC v Jesse Zhu* [2017] 5 HKC 479.

RELATED CAPABILITIES

- Litigation & Dispute Resolution
- Business & Commercial Disputes
- International Arbitration

MEET THE TEAM



Glenn Haley

Hong Kong SAR

glenn.haley@bclplaw.com

[+852 3143 8450](tel:+85231438450)



Ian Cheng

Hong Kong SAR

ian.cheng@bclplaw.com

[+852 3143 8455](tel:+85231438455)

This material is not comprehensive, is for informational purposes only, and is not legal advice. Your use or receipt of this material does not create an attorney-client relationship between us. If you require legal advice, you should consult an attorney regarding your particular circumstances. The choice of a lawyer is an important decision and should not be based solely upon advertisements. This material may be “Attorney Advertising” under the ethics and professional rules of certain jurisdictions. For advertising purposes, St. Louis, Missouri, is designated BCLP’s principal office and Kathrine Dixon (kathrine.dixon@bclplaw.com) as the responsible attorney.