

Insights

HK COURT CONFIRMS JURISDICTION OF ARBITRAL TRIBUNAL IN CAYMAN-RELATED DISPUTE

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SUMMARY

In *PI 1 and PI 2 v MR*^[1], the Hong Kong Court of First Instance (“**Court**”) dismissed the plaintiffs’ application to set aside an arbitral tribunal’s decision that it did have jurisdiction to hear a dispute.

It is noteworthy that in this case, the Court applied a Privy Council decision on Cayman Islands law in determining whether the claims brought against a Cayman Islands company, in an arbitration seated in Hong Kong, were arbitrable. There were good reasons for this, as explained below.

BACKGROUND

The 1st Plaintiff (P1) was a company incorporated in the Cayman Islands.

The 2nd Plaintiff (P2) was a majority shareholder of P1.

The Defendant (D) was a minority shareholder of P1.

Various agreements (“**Transactional Agreements**”) had been executed such that D became a minority shareholder of P1. Each of the Transactional Agreements contained an identical arbitration clause which provided that “[a]ny dispute, controversy, difference or claim arising out of or relating to [these agreements]... shall be referred to and finally resolved by arbitration”, with the arbitrations being administered arbitrations at the HKIAC in Hong Kong

Disputes arose between the parties, and D alleged that Ps had committed various breaches of certain provisions in the Transactional Agreements^[2]. D commenced arbitration against P1 and P2 (“Ps”), alleging that these breaches amounted to / led to: (a) unfairly oppressive and/or discriminatory conduct on the part of P2 (“**Oppressive Claims**”), and/or (b) loss of trust and confidence in P2’s management of P1’s affairs (“**Loss of Confidence Claims**”).

During the arbitration, Ps (being the respondents in the underlying arbitration) challenged the jurisdiction of the arbitral tribunal. After Ps' challenge was dismissed by the Court, Ps applied to the Hong Kong courts for an order to set aside the tribunal's decision on its jurisdiction under section 34 of the Arbitration Ordinance^[3].

Ps' challenge of the arbitral tribunal's jurisdiction was made on two bases:

- That the Oppressive Claims were not arbitrable because they fall within the exclusive jurisdiction of the Cayman Island courts (given that P1 was a Cayman Island company). Ps argued that the allegations in the Oppressive Claims had no other utility, other than to show that the just and equitable ground had been established under the Cayman Islands Companies Act for P1 to be wound up. The winding up on the just and equitable grounds fell under the Cayman Islands court's exclusive jurisdiction, and accordingly the tribunal should not have jurisdiction to hear the Oppressive Claims.
- That the Loss of Confidence Claims fell outside the scope of the wording of the arbitration clauses in the Transactional Agreements, and accordingly exceeded the jurisdiction of the tribunal.

HONG KONG COURT'S DECISION

The Court agreed with the tribunal that the tribunal should have jurisdiction to deal with the parties' dispute. The Court's decision can be summarised as follows:

BASIS 1: OPPRESSIVE CLAIMS NOT ARBITRABLE?

On this point, the Court referred to and applied the Privy Council decision in *Family-Mart China Holding Co Ltd v. Ting Chuan (Cayman Islands) Holding Corp*^[4], where the Privy Council held that, under Cayman Islands law, although an arbitral tribunal is unable to make a winding up order (because that power fell within the court's exclusive jurisdiction), matters such as whether a party had breached its obligations under a shareholders' agreement, or whether equitable rights arising out of the relationship between the parties had been flouted, were arbitrable.

The Court also rejected the argument made by Ps' counsel that "oppressive" and/or "discriminatory" conduct were difficult and complex concepts rooted in broader principles of Cayman Islands company law, and were not matters that can be determined by an arbitral tribunal as questions of fact. The Court held that an arbitral tribunal can, with the assistance of Cayman law expert evidence if necessary, decide these matters. In any event, regardless of whether an arbitral tribunal came to a conclusion as regards whether there had been "oppressive" and/or "discriminatory" conduct, ultimately it remained solely up to the Cayman court to decide in its discretion whether a winding up order should be made or not.

The Court therefore rejected Ps' challenge on this point and agreed with D that the Oppressive Claims were arbitrable – the arbitral tribunal did have jurisdiction to decide whether there had been unfairly oppressive and/or discriminatory conduct on the part of P2.

BASIS 2: LOSS OF CONFIDENCE CLAIMS FELL OUTSIDE THE ARBITRATION AGREEMENT?

On this point, Ps sought to rely on the Hong Kong High Court's decision in *Dickson Holdings Enterprise Co Ltd v Moravia CV*^[5], where the court had held that the disputes in that case related to “*various rights and obligations associated with membership of a company that exist independently of any shareholders' agreement*”, and therefore fell outside the scope of the arbitration clause in the shareholders' agreement.

In particular, the court in *Dickson Holdings* had held that issues relating to the “*notice of board meetings, payment for shares or forfeiture of shares*” were not governed by the shareholders' agreement in that case, but were governed by ordinary concepts of company law.

Relying on *Dickson Holdings*, Ps contended that, likewise, the Loss of Confidence Claims in the present case also were matters of general company law and were independent of and fell outside the scope of the arbitration agreements between the parties.

However, the Court disagreed with Ps, and distinguished the present case from *Dickson Holdings*:

- In *Dickson Holdings*, the dispute and claims made fell outside the scope of the relevant arbitration clause because the shareholders agreement in that case did not make provision for the disputed matters, i.e. the requirement for notice of meetings and how shares could be forfeited. In addition, the shareholders agreement in that case had not even been relied upon in formulating the pleaded claims.
- In the present case, P's alleged breaches “*relate precisely to obligations provided for and arising*” under the Transactional Agreements, and it was these breaches which D alleged had caused D's loss of confidence in Ps.

The Court therefore concluded that the claims made in the present case did not exist independent of the Transactional Agreements, and therefore fell within the ambit of the arbitration agreements.

The Court therefore dismissed Ps' challenge on the arbitral tribunal's jurisdiction, and awarded indemnity costs to D.

TAKEAWAY POINTS

This case is another example of the Hong Kong courts' pro-arbitration stance regarding arbitrability of disputes and the scope of arbitration agreements.

While being consistent in its pro-arbitration attitude, the Court also sought to strike a balance between giving effect to parties' arbitration agreements on the one hand, and respecting foreign courts' jurisdiction to wind up that jurisdiction's companies on the other hand.

[1] [2025] HKCFI 1110. Date of Decision: 18 March 2025.

[2] These breaches included allegations of unauthorised remuneration, unauthorised related-party transactions, failure to provide financial/business information

[3] Which gave effect to Article 16(3) of the Model Law.

[4] [2024] Bus LR 190.

[5] [2019] HKCLC 397

RELATED CAPABILITIES

- Litigation & Dispute Resolution
- International Arbitration

MEET THE TEAM



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