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Case Update: Hong Kong Arbitral Tribunal's Jurisdiction to Determine Disputes in Related Contracts

An arbitral tribunal lacks jurisdiction to determine claims raised under related agreements containing different dispute resolution clauses.

The Hong Kong Court of First Instance (Court) held in a [recent judgment](#) that an arbitral tribunal (Tribunal) constituted pursuant to an arbitration clause under one agreement has no jurisdiction to decide on matters in other related contracts which contain a distinct dispute resolution clause.

Background

This dispute concerned a financing arrangement documented in a set of related contracts between the claimant as the lender and the respondents as the borrower, and the guarantors, respectively. The suite of agreements included a Loan Agreement and a Promissory Note for the repayment of the debt under the Loan Agreement.

Although the Loan Agreement and the Promissory Note both provided for arbitration at the Hong Kong International Arbitration Centre (HKIAC), the arbitration clauses were not wholly identical. First, the Loan Agreement specified the appointment of three arbitrators, while the Promissory Note was silent on the number of arbitrators. Second, the arbitration clause in the Promissory Note constituted an escalation clause, as it imposed a 30-day negotiation period before the commencement of any arbitration, whereas the Loan Agreement did not contain any such requirement.

Following the respondents' payment default, the claimant commenced HKIAC arbitration pursuant to the arbitration clause in the Loan Agreement. During the arbitration, the claimant indicated its intention to amend its relief sought to include claims for payment under the Promissory Note. The respondents then complained that the Tribunal lacked jurisdiction over the claimant's claims based on the Promissory Note, and raised a jurisdictional challenge.

The Tribunal decided that it had jurisdiction over the claimant's claims based on the Promissory Note. The respondents disagreed and appealed to the Court against the Tribunal's decision on jurisdiction.

Decision

The Court quashed the Tribunal's decision and held that the Tribunal lacked jurisdiction to decide claims under the Promissory Note.

No Implicit Appointment of Tribunal Under Related Contracts

The Court reiterated that a tribunal can only be effectively appointed following confirmation by the relevant arbitral institution. When HKIAC appointed the Tribunal in this case, the appointment was made solely pursuant to the arbitration clause in the Loan Agreement.

Further, a clear indication is needed that a party is bringing a dispute to arbitration under a specific provision in a particular contract. The Court was not convinced that the mere reference to the Promissory Note in the notice of arbitration could amount to an implicit appointment of the Tribunal under the Promissory Note. The differences between the dispute resolution clauses in the Loan Agreement and the Promissory Note, as noted above, further emphasised this ambiguity.

“Centre of Gravity” Test Applies to Determine the Proper Forum for Dispute

The Court further confirmed that the “centre of gravity” test applies to determine whether a tribunal constituted under the dispute resolution clause in one contract has jurisdiction to resolve disputes arising in connection with the other contracts. The ultimate question is whether the relevant issue falls within the “centre of gravity” of the arbitration agreement under which the tribunal is appointed.

1. In determining so, the court must construe each contract to map out what disputes must have been intended to be covered by the dispute resolution clause of a given contract. In circumstances where multiple related contracts exist with different dispute resolution clauses, there is no initial presumption that the parties intend all disputes to be resolved in a single forum.
2. After such an exercise, if the court finds that the dispute concerns intertwined issues which might reasonably be regarded as falling within the ambit of two or more dispute resolution clauses, the court shall then locate the “centre of gravity” of that issue or dispute, assessing which resolution clause is “closer” to the issue or dispute.

Having applied the above test, the Court held that the question of the guarantors' liability to pay under the Promissory Note falls within the “centre of gravity” of the dispute resolution clause in the Promissory Note, but not the Loan Agreement. Accordingly, any claims for payment under the Promissory Note fall outside the Tribunal's jurisdiction.

Key Takeaway

This case provides helpful guidance regarding the question of a tribunal's jurisdiction in a multi-contract situation, which arises frequently in modern commercial disputes.

From a disputes perspective, parties should obtain legal advice promptly before commencing legal proceedings, to ensure that, where possible, related disputes are consolidated into one single proceeding to save time and costs and to avoid conflicting decisions in different proceedings.

From a transactional perspective, the parties should carefully consider during contract negotiation whether adopting the same dispute resolution clause across a package of contracts (similar to the multi-contract situation in this case) would help to ensure that all potential disputes can be resolved in one single proceeding, avoiding the need to spend time and costs to argue which jurisdiction clause applies.

In addition, parties should also consider whether the contracts should contain express provisions permitting the consolidation of arbitrations arising under the various related agreements.

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