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Hong Kong in the spotlight – the rule of law and international arbitration

Since the second half of 2014, Hong Kong has been in the international spotlight with the 'umbrella movement', symbolising the region's fight for democracy and making global headlines. This has brought into focus, not just for those in the legal profession but for the community at large, the issue of the rule of law in Hong Kong. Associated questions have been raised as to what the future holds for Hong Kong and what will become of its status as a premier international arbitration and disputes resolution venue. Upon closer examination, it is clear that, politics aside, Hong Kong's legal system has emerged triumphant from the global scrutiny.

The rule of law has long been an established cornerstone of Hong Kong's legal system. But what does it actually mean? In a speech given to celebrate the 25th anniversary of the Hong Kong International Arbitration Centre (HKIAC) on 4 December 2014, the Right Honourable Lord Hoffman expressed that the rule of law, in the context of international arbitration, means having a system of legal rules at the seat of the arbitration which is fair and efficient and which people can understand and having a judiciary that is independent and competent to lend support to the arbitration.[1] Yet events in the past year have called into question the ongoing independence of Hong Kong's judiciary and its ability to uphold the rule of law in its true sense.

On 27 June 2014, members of the judiciary, Hong Kong Law Society and the Hong Kong Bar Association participated in a silent march in response to the 'white paper' released by Beijing, which interpreted the 'one country, two systems' model in Hong Kong's Basic Law as requiring all administrators, including judges, to be patriotic and to love the country.[2] Many perceived Beijing's stance as jeopardising judicial independence, one of the core values of Hong Kong's legal systems and a fundamental tenet of the rule of law.

Thereafter, from late September 2014 onwards, hundreds of thousands of students and other protestors, dubbed the 'umbrella movement', occupied main parts of Central and other major roads in Hong Kong to stage a peaceful protest. Whilst the campaign was sparked by Beijing's decision to vet all Chief Executive candidates for the 2017 elections, the movement generally championed the themes of democracy, safeguarding of Hong Kong's freedoms and independence, and the upholding of the rule of law. The 'umbrella movement' continued well into mid-December 2014 – it did not affect or dampen spirits during Hong Kong Arbitration Week held in October 2014, but rather gave cause for dynamic discussions.

The protests and outspoken dialogue that have taken place in Hong Kong in the past year are clear evidence of the operation of the rule of law in Hong Kong, not a sign of its deterioration. Hong Kong has a long-established common law system and, in developing the same, evidently draws on the experiences of other jurisdictions including the United Kingdom, Australia, Canada and Singapore.

The Court of Final Appeal in Hong Kong also continues to maintain an extensive and impressive list of esteemed foreign judges, each of whom sit alongside two permanent Hong Kong judges to form a robust and truly impartial bench. The independence of Hong Kong's judiciary, its pro-arbitration stance, the force of the rule of law in the jurisdiction, and Hong Kong's sustained position as a preferred seat of arbitration in the Asia-Pacific region, have been invariably confirmed in recent months by, among others, the Honourable Andrew Li (former Chief Justice of the High Court of Hong Kong), the Honourable Mr Justice Geoffrey Ma (current Chief Justice of the High Court of Hong Kong), the Right Honourable Lord Neuberger (non-permanent member of the Hong Kong Court of Final Appeal), the Right Honourable Lord Hoffman (international arbitrator and non-permanent member of the Hong Kong Court of Final Appeal), and Mr Neil Kaplan QC (international arbitrator and former chair of the HKIAC).[3] As Lord Neuberger stated in a speech made in Hong Kong on 26 August 2014, '[i]f I felt that the independence of the judiciary in Hong Kong was being undermined then I would either have to speak out or I would have to resign as a judge', but there is simply 'no present problem' with the rule of law in Hong Kong.[4]

Indeed, in concluding his speech given at the HKIAC on 4 December 2014, 'Lord Hoffmann went on to broach what he called the unfortunate and uninformed perception that because it is a part of China, Hong Kong does not count as an independent jurisdiction and is unsuitable as a seat of arbitration. Anyone who makes an effort to educate themselves will find that perception to be misconceived, he said.'[5]

It seems clear then that Hong Kong has an independent judiciary which is openly supportive of arbitration (discussed further below), as well as a legal community united in ensuring that any misconception as to Hong Kong's rule of law remains no more than a myth.

GAR award recognises HKIAC innovation – new model arbitration clause and tribunal secretarial service

The HKIAC remains at the cutting edge of the international arbitration scene. This has been recognised at the Global Arbitration Review Awards Ceremony held in Washington, DC, on 25 February 2015, where the HKIAC received the award for 'innovation by an individual or organisation in 2014'. This award reflects, in particular, two innovative developments introduced by the HKIAC in the past year.

- In August 2014, the HKIAC became the first major international arbitral institution to introduce into its model arbitration clause an express governing law provision. Given the varying case law in Hong Kong, England, India and Singapore in recent years over the question of which governing law should apply to an arbitration agreement in the absence of an express provision,[6] this has been a welcome move among

arbitrators and practitioners in the Asia-Pacific region, and will no doubt continue to be adopted widely.

- Earlier, in June 2014 the HKIAC rolled out its tribunal secretarial service for HKIAC-administered and ad hoc arbitrations, allowing an arbitral tribunal to appoint a member of the HKIAC Secretariat as its secretary. The service was introduced together with a set of Guidelines on the Use of a Secretary to the Arbitral Tribunal, which detail the appointment, challenge, duties and remuneration of tribunal secretaries. The value of tribunal secretaries is increasingly recognised in international commercial arbitration for further enhancing arbitral tribunals' efficiencies and reducing overall costs for parties, thus reflecting another addition to the HKIAC's range of world-class capabilities.

Updates to procedures and practice note

In continuing the commitment to meet the needs of and deliver efficient and effective arbitral processes to its users, the HKIAC has introduced a number of updates to its procedures and practice notes in the past year. In October 2014, the HKIAC introduced a new Practice Note on the Challenge of an Arbitrator, providing a unitary system to govern challenges to arbitrators in arbitrations administered by the HKIAC under the 2008 and 2013 HKIAC Administered Arbitration Rules, the 1975 and 2010 UNCITRAL Arbitration Rules, and any other arbitration rules issued by HKIAC which designate HKIAC to decide challenges to arbitrators. The Practice Note sets out a streamlined procedure for filing and deciding any challenges to arbitrators. For the HKIAC, this system also serves to provide feedback on the quality of the arbitrators, thereby helping to ensure that excellence is maintained.

The HKIAC Procedures for the Administration of Arbitration under the UNCITRAL Rules (the 2015 Procedures) also came into effect on 1 January 2015. In the Asia-Pacific region, the HKIAC has the longest history of and experience in administering arbitrations under the UNCITRAL Arbitration Rules. The 2015 Procedures supersede the HKIAC's previous procedures for the administration of UNCITRAL arbitrations, and apply to all arbitrations commenced on or after 1 January 2015 pursuant to an arbitration agreement or investment treaty which provides for the 2015 Procedures to apply or provides for arbitration administered by the HKIAC under the UNCITRAL Arbitration Rules. The updates incorporated in the 2015 Procedures bring them into conformity with all versions of the UNCITRAL Arbitration Rules.

HKIAC administered arbitration rules

In the Hong Kong chapter of *The Asia-Pacific Arbitration Review 2014*, the author discussed extensively the new provisions introduced in the HKIAC's Administered Arbitration Rules which came into effect in November 2013 (the 2013 Rules). This innovative new set of rules, which reflect best practices and the most recent trends in international commercial arbitration, include updates to the scope of the rules, arbitrator fees and appointments, procedures for joinder of parties and consolidation of proceedings, the expedited procedure, confidentiality, and interim measures, and introduction of the emergency relief procedures.[7] The 2013 Rules continue to be well received and have been widely adopted in international commercial arbitrations.

Bolstering CIETAC Hong Kong – the 2015 CIETAC Arbitration Rules

Many will recall that the China International Economic and Trade Arbitration Commission (CIETAC) launched the CIETAC Hong Kong Arbitration Center (CIETAC Hong Kong), the only CIETAC office to be established outside of mainland China, in 2012. Since then, CIETAC has introduced a new set of arbitration rules, which came into effect on 1 January 2015 (the 2015 CIETAC Rules). Apart from changes which reflect recent trends in international arbitration practice,[8] such as the inclusion of provisions on emergency arbitrators and joinder and consolidation, the 2015 CIETAC Rules are significant as they introduce special provisions which are applicable only to CIETAC Hong Kong arbitrations.

In particular, Fee Schedule III now contains a separate fee schedule for CIETAC Hong Kong arbitrations. This is significant because CIETAC arbitrators are generally paid less than their counterparts in other international arbitration institutions. The new fee schedule significantly improves the fee scale and rates for arbitrators sitting in CIETAC Hong Kong arbitrations, which in turn should result in a greater pool of leading international arbitrators being available for CIETAC Hong Kong arbitrations.

Further, pursuant to chapter VI of the 2015 CIETAC Rules, for any arbitration administered by CIETAC Hong Kong:

- unless otherwise agreed, the seat of arbitration will be deemed to be Hong Kong, the arbitration procedure will be governed by Hong Kong law, and any award rendered will be considered a Hong Kong award;
- parties are entitled to nominate arbitrators who are not on CIETAC's panel of arbitrators, without obtaining consent from the other party; and
- the arbitral tribunal is expressly permitted to grant any appropriate interim relief, subject to the parties' agreement otherwise (this is broader than the tribunal's power in CIETAC arbitrations seated in mainland China).[9]

Although it is premature to assess the practical impact of the 2015 CIETAC Rules, they do render CIETAC Hong Kong a competitive option for users who wish to adopt a framework that is familiar and amenable to mainland Chinese parties but which also incorporate international arbitration standards. In any event, the 2015 CIETAC Rules will reinforce, or perhaps reflect, Hong Kong's unique position as a truly international dispute resolution centre.

Amendments to the Hong Kong Arbitration Ordinance

In line with its firm commitment to the continued development of international commercial arbitration in Hong Kong, the government continues to constantly receive comments on and to update the Arbitration Ordinance (Chapter 609 of the Laws of Hong Kong). In response to concerns raised by the arbitration community, the Hong Kong government has introduced, for the second time in two years, amendments to the Arbitration Ordinance. The Arbitration (Amendment) Bill 2015, which was gazetted on 23 January 2015, removes legal uncertainties relating to the opt-in mechanisms for domestic arbitration set out in schedule 2 of the Ordinance. The proposed amendments also update the list of parties to the New York Convention, with the addition of Bhutan, Burundi, the Democratic Republic of the Congo, Guyana and the British Virgin Islands (by extension from the United Kingdom).

Pro-arbitration stance of the Hong Kong judiciary

Judgments handed down by the Hong Kong courts in the past year not only continue to reflect the region's robust judiciary and its firm pro-arbitration stance, but also highlight Hong Kong as

the prime go-to jurisdiction in the Asia-Pacific region for international commercial arbitration.

Significantly, in the landmark case of *Astro Nusantara & Ors v PT Ayunda Prima Mitra & Ors*,[10] the Court of First Instance in Hong Kong was called upon to consider a decision of the Singapore Court of Appeal which found that substantial parts of Singapore arbitral awards were unenforceable in Singapore. In stark contrast, the Hong Kong Court ultimately found that the Singapore awards were enforceable in Hong Kong. The case is discussed in greater detail below.

Astro Nusantara & Ors v PT Ayunda Prima Mitra & Ors [2015] HKCU 432*

In this case, five Singapore arbitral awards (the SIAC Awards) had been issued in favour of Astro, who then applied to the courts of Singapore and Hong Kong respectively to enforce the awards. Orders had been granted in Hong Kong in 2010 for Astro to enforce the SIAC Awards in Hong Kong (the 2010 Orders). In Singapore, PT First Media challenged the enforcement proceedings, and in 2013 the Singapore Court handed down its judgment refusing to enforce substantial parts of the SIAC Awards on the basis that the arbitral tribunal had acted outside of its jurisdiction.

PT First Media applied to the Hong Kong courts seeking an extension of time to apply to set aside the 2010 Orders, and seeking to set aside the 2010 Orders on the basis that the same application before the Singapore Court of Appeal had been unfavourable to Astro. Accordingly, the Court of First Instance in Hong Kong was required to rule on the enforceability of the SIAC Awards in Hong Kong, the effect of the Singapore Court of Appeal decision on the enforceability of the SIAC Awards in Hong Kong, and whether the 2010 Orders should be set aside.

In dismissing PT First Media's application, Chow J held that the Court has a discretion to decline to refuse enforcement of an arbitral award (under section 44(2) of the old Arbitration Ordinance (Cap 341), which was applicable) in circumstances where there has been a breach of the good faith, or bona fide, principle by the award debtor. The Hong Kong Court found that PT First Media had acted in breach of the good faith or bona fide principle, and thus was not permitted to rely on the Arbitration Ordinance to resist enforcement of the SIAC Awards.

Justice Chow held that the principle of good faith was 'wide enough to cover situations recognised under our domestic law as giving rise to an estoppel or waiver',[11] and that in this case, PT First Media was fully aware of its right to challenge the SIAC's ruling on jurisdiction before the Singapore Court pursuant to article 16(3) of the Model Law at a much earlier stage of the arbitral process, but chose not to do so. Justice Chow was critical of PT First Media keeping the jurisdictional invalidity point (which was the key reason the Singapore Court of Appeal found the SIAC Awards to be substantially unenforceable) in reserve, to be deployed in the enforcement court only when it suited its interests to do so.

While recognising that there is 'no general obligation on the part of an award debtor to exhaust his remedies in the supervisory court' before resisting enforcement in the enforcement court,[12] in all the circumstances of the present case (including PT First Media's conduct during the arbitration), Chow J concluded that permitting PT First Media to resist enforcement of the SIAC Awards in Hong Kong would be contrary to the principle of good faith.[13] Justice Chow also noted that, notwithstanding that the Singapore Court of Appeal had refused to enforce substantial parts of the SIAC Awards in Singapore, the SIAC Awards had not been set aside in Singapore and so remain 'still valid and create legally binding obligations'[14] in Hong Kong. This position would not change as a result of any Singaporean Court decision to refuse enforcement of a substantial part of the SIAC Awards.

Chow J noted obiter that, if he was wrong in his substantive conclusion, he has residual discretion to permit enforcement of an award even if the award debtor is able to establish grounds for the refusal of enforcement. Justice Chow nonetheless conceded that such discretion is very narrow and, in this case, if he had not come to the conclusion he had, subject to the application of the good faith principle, he would not be prepared to exercise the residual discretion to permit enforcement of the SIAC Awards in Hong Kong given the Singapore Court of Appeal's finding that the SIAC Awards had been rendered by the arbitration tribunal without jurisdiction to do so.

In relation to PT First Media's time extension application, Chow J dismissed this also. Justice Chow held that, even if there was merit to PT First Media's setting aside application, he would still have refused the time extension application because a delay of 14 months was very significant, particularly in the context of resisting enforcement of a New York Convention award. Also, in this case, the delay was the result of a deliberate and calculated decision by PT First Media not to take action in Hong Kong.

Justice Chow dismissed PT First Media's extension of time and setting aside applications with costs.

T v TS [2014] 4 HKLRD 772

This case concerns a dispute over the jurisdiction of an arbitrator pursuant to the arbitration clauses in two separate agreements. The agreements contained similar arbitration clauses, which provided for 'any dispute' and 'any and all disputes' to be referred to arbitration. Arbitral proceedings were conducted and an award was granted, however the arbitrator failed to consider part of the dispute between the parties. The applicant (T) further argued that the arbitration clauses had become inoperative by virtue of performance, and commenced court proceedings to recover its claim. The respondent (TS) sought to stay the court proceedings in favour of arbitration.

Justice Mimmie Chan upheld the say. She found that, despite having failed to consider part of the dispute, the arbitrator had the requisite jurisdiction, thus the remaining part of the dispute should be referred back to the arbitral tribunal or a new arbitral tribunal for arbitration. Further, it was held that the language in the arbitration clauses was sufficiently wide to encompass multiple disputes and did not become inoperative simply as a result of failure to consider a part of the dispute.

This case reflects the Hong Kong courts' sharp criticism against attempts to 'reopen' through court proceedings issues which have already been dealt with in arbitration. Justice Chan noted in particular Reyes J's observation in *A v R (Arbitration: Enforcement)* [2009] 3 HKLRD 389 that:

> *Abortive and unmeritorious attempts to challenge or to frustrate enforcement of or compliance with a valid award should not be encouraged. Where a party unsuccessfully resists enforcement, or seeks to set aside an award, or as in this case, seeks unsuccessfully to reopen through court proceedings an issue dealt with in arbitration, instead of reverting to the arbitral tribunal or making a new submission to arbitration in accordance with an acknowledged and agreed arbitration clause, it should pay the incidental costs on an indemnity basis, unless special circumstances exist. The fact that it may have an arguable case would not constitute special circumstances.*[15]

Accordingly, Chan J stayed the court proceedings in favour of arbitration upon the respondent's application, and ordered that the applicant pay costs on an indemnity basis.

Z v A & Ors [2015] HKCU 375

The applicant applied to the Court of First Instance to resist enforcement of an arbitration award and to set aside the award under section 34 of the Arbitration Ordinance and article 16 of the Model Law, on the basis that the location of the arbitration was incorrectly decided and as such there was no jurisdiction. In this case, the parties only agreed that the governing law of the agreement would be the 'Laws of the People's Republic of China' and that the ICC Arbitration Rules would apply. The arbitral tribunal decided that the arbitration would take place in Hong Kong and that the procedural laws applicable to the arbitration would be Hong Kong law.

The application to set aside the arbitral award was rejected, on the basis that article 14(1) of the ICC Rules provides that the place of the arbitration is to be fixed by the ICC Court unless agreed upon by the parties. Justice Mimmie Chan emphasised that '[r]ational and reasonable businessmen would not have intended by their agreement to refer their dispute to arbitration by an institution, or in a place, which would render the arbitral award unenforceable'.[16] Especially given the vague terms in the agreement and the fact that there is a risk that an award in mainland China may not be enforceable in mainland China, Chan J held that the arbitral award was given within jurisdiction. Again, she ordered that costs be paid by the failed applicant on an indemnity basis.

VK Holdings (HK) Ltd v Panasonic Eco Solutions (Hong Kong) Co Ltd [2015] HKCU 50

This is another case where the jurisdiction of the arbitrator was disputed pursuant to section 34 of the Arbitration Ordinance. The dispute involved a sale and purchase contract for certain products, and a dispute arose as to whether the contract provided for the arbitration of disputes involving sale and purchase of other products not specifically mentioned in the contract. In upholding the well-known principle that an arbitrator has only such jurisdiction as the contracting parties have agreed to give him under the contract, Justice Mimmie Chan noted that '[e]ach arbitration clause must be construed in the context of the contract as a whole, and the meaning of a particular formula may be broader or narrower depending on the nature of the transaction'.[17] Given the wide language used in the contract and bearing in mind that the other products were very similar to the products specified in the contract, she found that the dispute was so closely linked and related to their relationship and the contract that it could not reasonably be said that any disputes relating to the other products would not be included in the contract. As such, Chan J held that the arbitrator had jurisdiction over the dispute. Costs were to be paid by the failed applicant on an indemnity basis.

Hong Kong Golden Source Ltd v New Elegant Investment Ltd [2014] HKCU 2251

This is a case concerning enforcement of a CIETAC arbitral award. The underlying arbitral proceedings related to a commercial dispute over the transfer of shareholdings in a company. Before the Hong Kong court, the applicant sought to resist enforcement of the mainland award on public policy grounds, specifically the prevention of criminal, fraudulent, corrupt or other unconscionable behaviour.

Justice Chow reiterated that it is the legislature's intent for mainland awards to be 'readily enforceable in Hong Kong and refusal to enforce should be an exception rather than the rule'.[18] He noted that the discretion the court has to refuse enforcement is a residuary one, and the required threshold to resist enforcement is a very high one. Where enforcement is resisted on the ground that it would be contrary to public policy, it should be borne in mind that Hong Kong public policy itself leans towards the enforcement of foreign arbitral awards. As such, 'contrary to public policy' should be given a narrow construction, and it must be shown that there is a 'substantial injustice arising out of an award which is so shocking to the court's conscience as to render enforcement repugnant'[19] before the Hong Kong courts would consider non-enforcement of a foreign arbitral award.

Justice Chow found that the public policy grounds were insufficient to refuse the enforcement of the mainland arbitral award. Costs were to be paid by the failed applicant on an indemnity basis.

Arima Photovoltaic & Optical Corp v Flextronics Computing Sales and Marketing (L) Ltd [2014] 5 HKLRD K1

The applicant in this case sought to set aside an international arbitral award on the basis that the arbitral tribunal's award did not constitute a reasoned award. It was claimed that this resulted in breaches of article 34(2)(a)(iii) and (iv), and 34(2)(b)(ii) of the Model Law, entitling the court to set aside the arbitral award. The application was refused at first instance and, on appeal, was again refused by the Court of Appeal on the basis that sufficient reason was given, noting that the burden is on the plaintiff to 'establish that the award rendered by the tribunal was one that was not reasoned'.[20] Costs were to be paid by the failed applicant on an indemnity basis.

S Co v B Co [2014] 6 HKC 421

In this case, the applicant challenged an arbitral award under article 34(2) of the Model Law, on the basis that the arbitral tribunal acted outside of its jurisdiction under article 16(3) of the Model Law and that the award should not be enforced as it is in conflict with the public policy of Hong Kong.

Justice Mimmie Chan held that in deciding whether the tribunal acted within jurisdiction, the court should conduct an independent review and not be bound or restricted by the tribunal's preliminary decision on its own jurisdiction, namely, the court should not be in a worse position than the arbitrator in determining the challenge (as per *Dallah Real Estate and Tourism Holding Co v Ministry of Religious Affairs of the Government of Pakistan* [2011] 1 AC 763). She further stressed the need for a party to act promptly in relation to any allegation of non-compliance or breach of the procedural rules or of natural justice, as a party's failure to raise such a point before the court of supervisory jurisdiction may amount to an estoppel or lack of good faith, thereby precluding him from raising the same before the court of enforcement.[21] In relation to public policy, Chan J emphasised the narrow approach in determining whether an award would be contrary to public policy and noted that the arbitral award in this case came nowhere near the standard required.

Justice Chan found that the tribunal had acted within jurisdiction, dismissed the application to resist enforcement and ordered costs against the applicant on an indemnity basis.

Conclusion

As demonstrated by the recent developments highlighted in this chapter, Hong Kong continues to be a significant player in the

international arbitration arena. The 'umbrella movement' and the dialogue generated both onshore and abroad by the fight for democracy and independence under the 'one country, two systems' model has provided an opportune spotlight for Hong Kong to stand proud, and to showcase both the independence of its highly-regarded judiciary and the strength of the rule of law in Hong Kong.

The firm commitment of the government, the courts, eminent judges, the international arbitral institutions with a key presence in Hong Kong (the HKIAC, ICC and CIETAC), and the arbitration community at large in supporting Hong Kong as a premier international arbitration venue, is further evident in the variety of developments that have taken place recently – from the updated and innovative HKIAC rules, new procedures and guidelines issued by the HKIAC and CIETAC; to the ongoing updates to the Arbitration Ordinance; and, most notably, the recent landmark decision of the Hong Kong Court of First Instance to enforce SIAC arbitral awards notwithstanding an earlier decision by its Singaporean counterpart refusing to enforce those same awards.

In summary, although Hong Kong has been measured by the international arbitration community and the world at large over the course of the past year, it has stood up well to the scrutiny and, importantly, not been found wanting.

Notes

* Please note that in the printed edition of this chapter, the applicant, PT First Media, was erroneously named PT Ayunda. The authors apologise for the oversight and for any confusion caused.

1 Olga Boltenko, 'Hong Kong: Lord Hoffman's rule of law musings', 10 December 2014, *Global Arbitration Review*, Volume 10 – Issue 1.

2 The full text of the 'white paper', titled 'The Practice of the "One Country, Two Systems" Policy in the Hong Kong Special Administrative Region', was released by the Office of the Commissioner of the Ministry of Foreign Affairs of the People's Republic of China in the Hong Kong SAR on 10 June 2014. It is available online at: www.fmcoprc.gov.hk/eng/xwdt/gsxw/t1164057.htm.

3 This issue is discussed in detail in the article by Alison Ross, 'The umbrella cause', *Global Arbitration Review*, 10 November 2014, . See also the article in Note 1, above.

4 Clare Baldwin, 'Foreign judge in Hong Kong defends city's legal independence', Reuters, 26 August 2014. Also see Note 3, above.

5 See Note 1, above.

6 See, for example, *Klöckner Pentaplast Gmbh & Co Kg v Advance Technology* (H.K.) Company Limited HCA1526/2010, where the Court of First Instance in Hong Kong discusses the issue; *Sulamérica Cia Nacional De Seguros SA and others v Enesa Engenharia SA* [2012] EWCA Civ 638, which sets down the English position; and *FirstLink Investments Corp Ltd v GT Payment Pte Ltd and others* [2014] SGHCR 12, which sets out the approach in Singapore.

7 For a detailed explanation of the 2013 Rules and the new provisions introduced therein, refer to the Hong Kong chapter of *The Asia-Pacific Arbitration Review 2014*.

8 For example, Appendix III of the 2015 CIETAC Rules set out emergency arbitrator provisions, and multi-party and multi-contract arbitrations is dealt with in articles 14, 18 and 19.

9 Chapter VI of the 2015 CIETAC Rules applies only to CIETAC Hong Kong arbitrations. See, for example, articles 74, 76 and 77.1.

10 [2015] HKCU 432.

11 Per Chow J at paragraph 81 of the decision.

12 Ibid, paragraph 82.

13 Ibid, detailed discussion of relevant case law on public policy and principles of good faith from paragraph 66 onwards.

14 Ibid, paragraph 129.

15 Per Reyes J, at paragraph 28 of the decision.

16 Per Chan J, at paragraph 47 of the decision.

17 Per Chan J, at paragraph 24 of the decision.

18 Per Chan J, at paragraph 28 of the decision.

19 Per Chan J, at paragraph 28 of the decision.

20 Per Barma JA, at paragraph 7 of the decision.

21 At paragraph 76 of the decision, following *Hebei Import & Export Corp v Polytek Engineering Co Ltd* [1999] 2 HKC 205 and *Gao Haiyan v Keeneye Holdings Ltd* [2012] 1 HKC 335.

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