CHINA DISPUTE RESOLUTION

NEWS LETTER

May 2024

JT&N 金诚同达

FEATURES

NEWS ALERT

1. Supreme People's Court Releases Work Report

On 8 March 2024, the Supreme People's Court issued a work report reviewing the Court's docket from 2023. Throughout the year, 24,000 foreign-related civil and commercial cases were concluded, along with 16,000 maritime-related cases. Additionally, 16,000 cases concerning the judicial review of arbitration were concluded, emphasizing the Court's enhanced focus on supervising arbitration. The report stated some 552 arbitration awards had been set aside, while 69 foreign arbitral awards had been recognised and enforced. In addition, the report outlined the envisaged work arrangements and systems for 2024. These include the improvement of the systems by which cases concerning matters of foreign law are determined, the continuous enhancement of judicial efficiency in relation to cases touching on questions of foreign law, and the deepening of international judicial exchange and cooperation.

2. Supreme People's Court's Opinion on Standardizing and Strengthening Interim Relief and the Preservation of Assets Takes Effect from 1 March 2024

The Supreme People's Court recently issued its Opinion on Standardizing and Strengthening Interim Relief and the Preservation of Assets (the "Opinion"). The Opinion addresses issues such as the inconsistent application of interim relief and preservation of property in practice, and came into effect on 1 March 2024.

The Opinion is divided into six parts, and includes general provisions, provisions governing the accepting of applications for interim relief or the preservation of assets, approval of pre-litigation preservation applications, implementation of pre-litigation preservation measures, improvement of ancillary coordination mechanisms, and supplementary provisions. Under Article 2 of the Opinion, the pre-litigation preservation system applies to property preservation, evidence preservation, and preservation of conduct. In addition, the Opinion refines pre-litigation preservation rules, clarifies the guarantee requirements for different types of pre-litigation preservation, stipulates specific requirements for seeking information about preserved property, sets out situations which might warrant urgent interim relief, and delineates the scope of property that cannot be made subject to pre-litigation property preservation measures.

3. Supreme People's Court Launches Enhanced Version of "One-Stop" International Commercial Dispute Resolution Platform

On 31 March 2024, the upgraded version of the Supreme People's Court's "One-Stop" International Commercial Dispute Resolution Platform (the "One-Stop" platform) (https://cicc.court.gov.cn/pc) was officially launched on the International Commercial Court website. The One-Stop platform consists of four modules: mediation services, arbitration services, litigation services, and auxiliary services (comprising neutral assessment and case scheduling services). For disputes with a disputed amount exceeding 300 million RMB or involving matters with wider commercial implications, parties can choose the neutral assessment function in the "Auxiliary Services" of the One-Stop platform before submitting applications for mediation, arbitration, or litigation. Parties can also apply for a professional assessment from the Supreme

People's Court's international commercial expert committee based on the facts of the case. This allows parties to obtain useful information in assessing potential litigation outcomes and choose the most suitable dispute resolution process. For instance, if a party needs arbitration services, they can click on the "Arbitration Services" module and select the arbitration application, which will then be directly populated, reviewed, and filed with various arbitration institutions as selected by the party / parties.

4. SIAC Award Recognized and Enforced by the Ningbo International Commercial Court in China

On 14 March 2024, an arbitral award issued under the auspices of the Singapore International Arbitration Centre (SIAC) was recognized and enforced by the Ningbo International Commercial Court in China. This case marks the first instance since the establishment of the Ningbo International Commercial Court where a ruling under the New York Convention was recognized and enforced. The case involved the performance of a contract for the sale of goods between a Singaporean company and a Chinese company. The decision pointed out that Singapore is a party to the Convention Abolishing the Requirement of Legalisation for Foreign Public Documents, and the applicant for enforcement had completed all the requisite notarization procedures for the award and underlying contract. These documents were also accompanied by an additional certificate in accordance with the requirements of the said Convention. Therefore, the application was found to be formally compliant with Article IV of the New York Convention. Moreover, the Ningbo International Commercial Court found that recognizing or enforcing the award would not contravene China's public policy, and there are therefore no barriers to enforcement.

5. HKIAC Releases 2023 Arbitration Data Related to Mainland China

On 6 March 2024, the Hong Kong International Arbitration Centre (HKIAC) released its case statistics for 2023. The data shows a steady increase in the number of applications for interim relief filed under the Arrangement Concerning Mutual Assistance in Court-ordered Interim Measures in Aid of Arbitral Proceedings by the Courts of the Mainland and the Hong Kong Special Administrative Region (hereinafter referred to as the "Arrangement").

In 2023, HKIAC handled 19 applications for interim relief under the Arrangement. These included applications for injunctions concerning both property and conduct. These applications were filed with 13 Mainland Chinese courts, with a total value of RMB 3.5 billion (approximately USD 491 million). Among these, Mainland Chinese courts granted interim relief totalling approximately RMB 544 million (approximately USD 76.1 million). From the Arrangement coming into effect in October 2019 until the end of 2023, the HKIAC has handled a total of 105 applications for interim relief and has dealt with the Mainland Chinese courts granting interim orders valued at a total of RMB 15.8 billion (approximately USD 2.2 billion).

6. Asia Pacific International Arbitration Chamber Hong Kong Center Officially Launched

On the morning of 7 April 2024, the inauguration ceremony of the Asia Pacific International Arbitration Chamber Hong Kong Center was held at the Chung Hing Commercial Building in Western Central, Hong Kong. The establishment of this branch in Hong Kong aims to promote the development of international commercial arbitration in the Guangdong-Hong Kong-Macao Greater Bay Area. The Asia Pacific International Arbitration Chamber was jointly initiated by

arbitration experts from Mainland China, Hong Kong, Macau, Singapore, Malaysia, Indonesia, the United States, and other countries and regions around the Pacific Rim. After obtaining pre-approval for its name from Singapore's Ministry of Law, it was registered with the Accounting and Corporate Regulatory Authority of Singapore and established in 2023. Currently, the Asia Pacific International Arbitration Chamber has branches in Canada, Indonesia, Malaysia, and Hong Kong, as well as in the Zhejiang, Chongqing, and Sichuan provinces of China. The Asia Pacific International Arbitration Chamber primarily targets the trade disputes market within the framework of the Belt and Road Initiative, as well as cases involving China-ASEAN cooperation. The Chamber provides international arbitration legal services and seeks to promote dispute resolution in the Asia Pacific region and globally.

7. Shenzhen Qianhai Court Introduces Measures to Optimize the Execution of Foreign and Hong Kong, Macao, and Taiwan-related Cases

To facilitate the execution of foreign and Hong Kong, Macao, and Taiwan-related commercial cases, the Shenzhen Qianhai Court (the "Qianhai Court") has recently implemented several optimization measures:

1. Since many foreign individuals are involved in commercial cases involving elements of foreign law before the Qianhai Court, this often requires tracking of these individuals' whereabouts. The Qianhai Court has thus formulated the "Manual for Restricting Exit Measures in Handling Cases," which clarifies the objectives of exit restrictions, conditions for imposing and lifting restrictions, and other such border control measures. The Manual aims to ensure lawful and standardized enforcement of commercial judgments and orders.

2. In terms of verifying the identity information of defendants, the Qianhai Court has established a cooperation mechanism with the Shenzhen Police Department. The Qianhai Court can send assistance inquiry notices to the Shenzhen Exit-Entry Administration Bureau, ensuring a comprehensive investigation into the defendant's identity card number, address, and other information. This facilitates the conduct of a thorough search for assets held by the defendant, thereby reducing the cost of investigating enforcement options for the parties involved.

3. In order to streamline the payment of judgment debts out of the jurisdiction after enforcement has taken effect, the Qianhai Court has established a consultation and communication mechanism with the Shenzhen Branch of the State Administration for Foreign Exchange. This collaboration ensures effective communication and cooperation on issues related to foreign exchange and currency controls during the execution process, thereby shortening the time for funds which have been subject to execution and / or enforcement to reach their destination.

8. Injunction Granted in HKIAC Dispute over Leukaemia Treatment

A NASDAQ-listed biopharma company has obtained emergency relief following HKIAC proceedings requiring its Chinese partner to halt the commercialisation of a cell therapy treatment for leukaemia. According to a regulatory filing by CASI Pharmaceuticals, an emergency arbitrator appointed by the HKIAC issued an order on 5 April 2024 granting the company injunctive relief against Beijing-based Juventas Cell Therapy. CASI says the order prohibits Juventas from commercialising a cell therapy known as CNCT19 by itself or through a third party while an arbitration is pending.

CASI, which is registered in the Cayman Islands and principally operates in China, says it acquired worldwide licence and commercialisation rights to CNCT19 from Juventas under an exclusive licence agreement signed in 2019. It says the parties signed a further agreement the following year to jointly market the treatment, including by establishing medical teams and conducting clinical studies. The dispute arose after CASI received a notice from Juventas last month purporting to terminate the two agreements for alleged non-performance.

9. Xi'an Arbitration Commission Issues the Country's Early Dismissal Decision

In March 2024, the Xi'an Arbitration Commission issued the country's first early dismissal decision. The decision followed an application for early dismissal of arbitral proceedings by the arbitration respondent. The case involved a dispute over a cooperation agreement, with the respondent submitting an early dismissal application before the first hearing, arguing that the arbitration request lacked legal basis and fell outside the arbitral tribunal's jurisdiction. In accordance with Article 53 of the Xi'an Arbitration Commission Arbitration Rules, the arbitration tribunal decided to conduct an early dismissal hearing upon receiving the early rejection application. After hearing both parties' submissions, the tribunal promptly granted the application and provided reasons for its decision.

The early dismissal system originated from the common law legal system and the ability to hear matters as preliminary issues. It has gradually been adopted by commercial arbitration. In July 2023, the Xi'an Arbitration Commission released a new version of its arbitration rules, and was the first in the country to introduce the early dismissal system. The introduction of this system aims to allow parties to apply for the early rejection of requests or defences that clearly lack legal basis or clearly fall outside the jurisdiction of the arbitral tribunal in the early stages of proceedings. This serves to further enhance the efficiency and expediency of the arbitration process.

10. Supreme People's Court Case Database Officially Launched on February 27 2024

On 27 February 2024, the Supreme People's Court held a press conference to announce the official launch of the Supreme People's Court Case Database. The database includes cases covering topical legal issues such as online harassment, telecommunications fraud, food safety, self-defence, and domestic violence. Unlike the direct publication of judgments on the China Judgments Online portal, the Case Database has been curated by the Supreme Court such that it specifically features guideline and reference cases. Cases are also categorized into sections by reference to keywords, key holdings, legal provisions involved, basic case information, judgment reasoning, and judgment result. This categorisation aims to make cases more comprehensible and accessible. In terms of functionality, the Case Database clearly complements the Judgment Documents Network.

Lessons learnt from the SICC's Rejection of Reliance Infrastructure Limited's Application to Set Aside a SIAC Arbitral Award: The Importance of International Arbitration Strategy and Timing

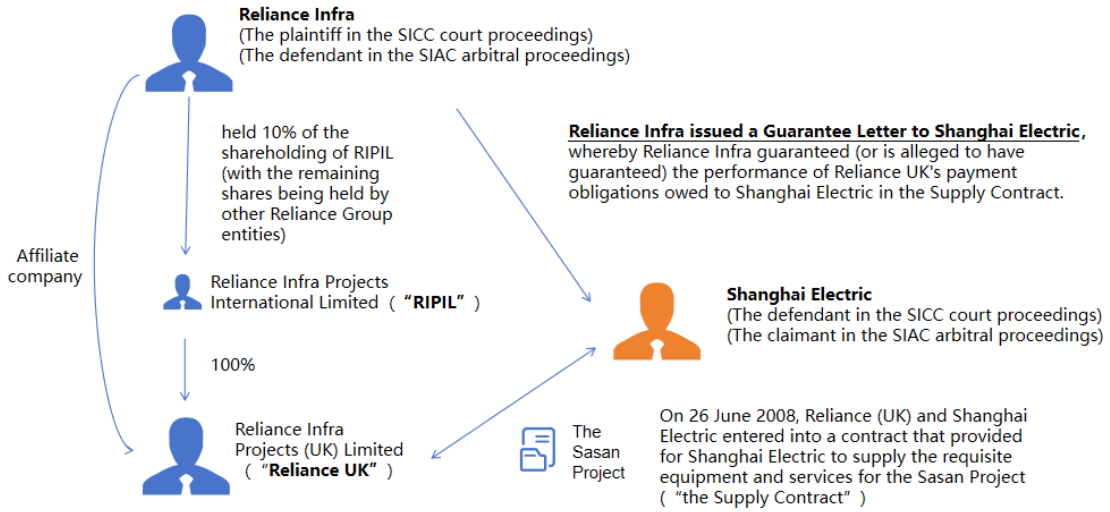
Stella Lu, Enxi Zhu

Abstract

In the case of Reliance Infrastructure Limited v. Shanghai Electric Group Co., Ltd. [2024] SGHC(I) 3, the Singapore International Commercial Court ("SICC") dismissed Reliance Infrastructure Limited ("Reliance Infra")'s application for revocation of an arbitral award. Reliance Infra had argued, inter alia, that (a) the Singapore International Arbitration Centre ("SIAC") lacked jurisdiction' (b) the award had been procured by fraud; and (c) the award was in any event contrary to the public policy of Singapore. In the challenged award, the tribunal had ordered Reliance Infra to pay Shanghai Electric approximately US$146 million.

The principal question in this case was whether Reliance Infra, by not alleging forgery in the signature of the arbitration agreement during the arbitration proceedings, was deemed to have waived its right to object to the arbitral tribunal's jurisdiction on that ground.

Case Summary



June 24, 2008, Shanghai Electric signed a Supply Contract with Reliance Infra Projects (UK) Limited ("Reliance UK") for a project (the "Sasan project") which required Shanghai Electric to provide the necessary equipment and services.

June 26, 2008, Reliance Infra, on the basis of a Guarantee Letter purportedly signed by Mr. Agrawal of Reliance Infra, (allegedly) assured the performance of Reliance UK's payment obligations to

Shanghai Electric under the Supply Contract. Years into the commercial operation of the project, Reliance UK still owed Shanghai Electric various sums for equipment and other related expenses.

December 2019, Shanghai Electric submitted a request for arbitration to the SIAC, claiming at least US$135 million from Reliance Infra based on the Guarantee Letter, among other sums. [1]

December 2022, the SIAC arbitral tribunal ruled that Reliance Infra must pay Shanghai Electric a total of approximately US$146 million. [2]

May 2023, Reliance Infra applied to the SICC to set aside the SIAC's arbitral award ("the Award"), arguing that the signature on the crucial evidence, the Guarantee Letter, was forged, thereby rendering the SIAC without jurisdiction, and the award was affected by fraud, which leads to contrary to public policy of Singapore.

January 31, 2024, the SICC, on the basis of Reliance Infra having waived its jurisdictional objections, dismissed Reliance Infra's application for revocation of the arbitral award.

The SICC's Reasoning[3]

In the SIAC arbitral proceedings, Reliance Infra only challenged the validity of the Guarantee Letter by reference to (a) there being no record of its issuance within the company; and (b) Mr. Agrawal's purported lack of authority to sign the letter on behalf of the company. However, Reliance Infra neither alleged forgery of the Guarantee Letter nor challenged the arbitral tribunal's jurisdiction during the arbitration, which was later brought up in the SICC court proceedings. The SIAC arbitral tribunal had already gone through the arbitral proceedings with a substantive review of the case, and identified the Guarantee Letter to be valid. A final ruling against Reliance Infra in favor of Shanghai Electric had also accordingly been issued.

Reliance Infra's core argument in its application to the SICC to set aside the Award was that the signature on the Guarantee Letter was forged, which led to a lack of genuine consensus on the arbitration agreement between the two disputed parties. Consequently, the SIAC lacked jurisdiction to decide on the validity of the Guarantee Letter, rendering the Award liable to be set aside. The court primarily examined this jurisdiction objection, focusing on whether Reliance Infra had waived its right to object to the arbitral decision on the grounds of forgery.

The SICC (*per* Jeyaretnam J) noted that Reliance Infra had made no such representation during the arbitration, and had only raised these points after the SIAC Award had been issued. Given that Reliance Infra was aware of the fundamental facts necessary to object to the tribunal's jurisdiction on grounds of forgery and lack of authorization, and had no substantial reason not to raise these objections earlier, it must be taken to have waived its right to raise these objections in the SICC. Consequently, Reliance Infra's application to set aside the award was unwarranted. While that would have sufficed to dispose of the application, the SICC went on to examine the authenticity of the Guarantee Letter and Mr. Agrawal's apparent authority to execute it on behalf of Reliance Infra. The SICC concluded that the evidence showed that Mr. Agrawal had in fact signed the Guarantee Letter and that Reliance Infra had 'held him out' as having the apparent authority to enter into arbitration agreements with Shanghai Electric on its behalf. In conclusion, the SICC clarified that even if Reliance Infra had not constituted a waiver of objection, the Guarantee Letter was in fact valid, and the Award accordingly remained effective and valid.

Analysis

1. Jurisdictional Objections in International Commercial Arbitration

The SICC applied Singapore's International Arbitration Act ("IAA"), which incorporates most of the provisions of the United Nations Commission on International Trade Law (UNCITRAL) Model Law on International Commercial Arbitration ("Model Law"), The Model Law is specifically included in the IAA as its First Schedule. Article 3 of the IAA specifies that, aside from content related to Chapter VIII on the recognition and enforcement of arbitral awards, the Model Law is legally effective in Singapore.

According to Article 16 (2) of the Model Law: "a plea that the arbitral tribunal does not have jurisdiction shall be raised not later than the submission of the statement of defense. The arbitral tribunal may, in either case, admit a later plea if it considers the delay justified."

1) Timing Restrictions

The requirement to raise objections to the arbitral tribunal's jurisdiction before the submission of the statement of defense is intended to ensure that parties promptly challenge the tribunal's jurisdiction. Generally, parties should object to the jurisdiction at the early stages of the arbitration proceedings to avoid being deemed to have accepted the tribunal's jurisdiction by default. This applies *a fortiori* where the party which might have challenged the tribunal's jurisdiction is amply aware of the factual basis on which such a challenge might be mounted.

2) Justified Reasons for Delay

If a party does not raise jurisdictional objections early on but does so later, it will typically need to prove that there was a valid reason for the delay. Otherwise, the arbitral tribunal or reviewing court may consider that the party has waived its right to object. What constitutes a sufficient and reasonable cause usually depends on the discretionary power of the arbitral tribunal or court.

In this case, Reliance Infra consciously opted not to raise the accusation of forgery concerning the Guarantee Letter during the arbitration proceedings. The company's confidence in the success of its other challenges to the Guarantee Letter's validity led to this strategic decision. However, upon its failure before the tribunal, Reliance Infra subsequently alleged forgery and lack of authorization to the court. The SICC unsurprisingly deemed this belated and tactical assertion insufficient to justify the delay.

2. Waiver of Objections in the Context of International Commercial Arbitration

The aforementioned judgment elucidates the principle of "waiver of objections" in international arbitration from a practical perspective. Article 4 of the Model Law explicitly states: "A party who knows that any provision of this Law from which the parties may derogate or any requirement under the arbitration agreement has not been complied with and yet proceeds with the arbitration without stating his objection to such non-compliance without undue delay or, if a time-limit is provided therefor, within such period of time, shall be deemed to have waived his right to object."

Mainstream arbitral institutions in China have similar provisions in their respective rules, notably the "2024 China International Economic and Trade Arbitration Commission Arbitration Rules" and

the "2024 Shanghai International Arbitration Center Arbitration Rules," both of which include provisions on waiver of objection: "A party who knows or should know that any provision of these rules or any condition of the arbitration agreement has not been complied with, but continues to participate in the arbitration or proceeds without promptly and explicitly raising such an objection in writing, is deemed to have waived the right to object."

3. Conclusion

Considering the SICC's verdict along with established norms in international commercial arbitration, it is essential for involved parties to exercise caution, undertake detailed inquiries, and develop well-rounded litigation tactics right from the beginning of a dispute. Diligently considering procedural rights will be crucial to determining whether it is necessary to raise relevant objections (in writing where appropriate) and thereby avoiding the risk of inadvertently waiving those objections. Such careful handling can help maintain the strongest likelihood of a successful outcome in arbitration.

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1 The quantum of the dispute was disclosed by Shanghai Electric in an announcement: 《Announcement on the Progress of Major Arbitration by Shanghai Electric Group Corporation on the Sasan Coal-Fired Power Plant Project in India》, 26 May 2023.

2 Ibid.

3 Reliance Infrastructure Ltd v. Shanghai Electric Group Co Ltd [2024] SGHC(I) 3.

Recent development of the *forum non conveniens* principle in China

Alan Li, Yaqing Luo

Abstract

Last year, China amended its Civil Procedure Law. On 1 January 2024, the amended Civil Procedure Law was implemented. The amended Civil Procedure Law elevated the principle of forum non conveniens to a legal provision for the first time, and further refined the rules for handling cases under that principle.

Over the past decade, Chinese courts have rarely applied the principle of forum non conveniens due to the strict criteria for its application. Judges have also tended to adopt a more cautious approach when deciding whether a case is of interest to Chinese citizens, enterprises, and other organizations. This article will discuss the development and future trend of the doctrine of forum non conveniens in China in light of this historical backdrop, both in terms of its evolution and application.

Origins of the principle of forum non conveniens in China

Historically, China's Civil Procedure Law and related judicial interpretations did not recognize the principle of forum non conveniens. In the 1980s, Chinese courts began to encounter more foreign cases, though the judicial approach to these cases largely adhered to the "principle of long-arm jurisdiction", which does not recognize the principle of forum non conveniens. The overall attitude of the Supreme People's Court in 1989 was that:

"*For economic disputes occurring outside of China over which the courts of China do not have jurisdiction, except for disputes involving real property rights, as long as both parties have agreed in writing to litigate in Chinese courts, the people's courts of China shall acquire jurisdiction over such litigation on the basis of the written agreement submitted by the parties. In the absence of such an agreement, if one party files a lawsuit with the people's court of China and the other party responds to the lawsuit and defends itself on the substantive issues, the parties are deemed to have recognized the jurisdiction of the people's court of China over the lawsuit.*"

This approach to jurisdiction gave rise to a number of complications. In particular, where parties insisted on filing suit in Chinese courts despite fairly tenuous links to the jurisdiction, the Chinese courts often did not have sufficient legal grounds to dismiss for lack of jurisdiction. As a result, courts faced several challenges in hearing such cases, notably the inability to serve legal documents, difficulties in investigating and obtaining evidence, the inability to hold court hearings, problems in ascertaining foreign law, and problems in recognizing and enforcing judgements overseas.

In 1993, the Shenzhen Intermediate People's Court accepted the Dongpeng Trading Company v. Bank of East Asia case, which concerned a dispute arising from a letter of credit. In that case, both parties were registered in Hong Kong, China. After the court had accepted jurisdiction over the case, the defendant filed a jurisdictional appeal, and the case was accordingly submitted to the Supreme

People's Court. Before the Supreme People's Court, the principle of forum non conveniens was applied. In particular, given that both parties were Hong Kong companies, the dispute had no real connection with mainland China. Accordingly, for the purpose of facilitating the litigation, the Supreme People's Court ruled that the plaintiff's lawsuit should be dismissed. This case became the earliest application of the principle of forum non conveniens in China's foreign-related civil and commercial practice. Subsequently, there have been a number of cases in which jurisdiction was declined on forum non conveniens grounds.

Development and in relation to forum non conveniens in China

In 2004, the Fourth Civil Division of the Supreme People's Court stated in its "*Answers to Practical Questions on Maritime Trial in Foreign-related Commercial Matters (I)*" that despite the absence of specific legal provisions, the people's courts may apply the principle of forum non conveniens to decline jurisdiction. This marked the first time such a position was adopted. However, forum non conveniens was still said to be subject to the court's discretion in determining whether or not to apply the principle would be applied.

In 2005, the Supreme People's Court's *Proceedings of the Second National Working Conference on Maritime Trial of Case-Related Commercial Matters* identified for the first time the seven elements under which the doctrine of forum non conveniens would be applied by the Chinese courts: (1) the defendant requests the application of the principle of forum non conveniens or raises a jurisdictional challenge, and the court which is hearing the case in question considers that the principle of forum non conveniens may be applied; (2) the court where the case is heard otherwise has jurisdiction over the case; (3) there is no agreement between the parties to choose the jurisdiction of Chinese courts; (4) the case does not fall within the exclusive jurisdiction of the Chinese courts; (5) the case does not involve the interests of citizens, legal persons or other organizations in China; (6) the major facts in dispute in the case did not occur within the territory of mainland China and the laws of the PRC are not applicable, such that the Chinese court hearing the case would face major difficulties in determining the facts of the case and in applying the relevant law; and (7) the foreign court is the more convenient forum.

In 2014, the principle of forum non conveniens was formalised in article 532 of *the Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China.* The 2022 of the said law shifted the principle to article 530, albeit without any change in its content. From 2014 to 2024, invoking the principle of forum non conveniens thus entailed six requirements: (1) the defendant filed a jurisdictional challenge or a request that the case be heard by a more appropriate foreign forum; (2) there was no agreement between the parties to choose the jurisdiction of the courts of the PRC; (3) the case did not fall within the exclusive jurisdiction of the courts of the PRC; (4) the case did not involve the interests of the Chinese State, citizens, legal persons or other organizations of the PRC; (5) the main facts in dispute in the case did not occur in the territory of the PRC, and the case does not apply the laws of the PRC, such that the Chinese court hearing the case would face significant difficulties in determining the facts and applying the law; and (6) the foreign court is the more appropriate forum.

In practice, however, the six elements set out above have not been accorded equal weight. In practice, cases "involving the interests of the Chinese state, citizens, legal persons or other organizations"

pre-dominate. For example, in TCL v. Ericsson, which concerned an alleged abuse of a dominant market position the Supreme People's Court was heavily influenced by the fact that the plaintiff TCL's registered address and principal place of business were all located in China. Moreover, the effects of the alleged market abuse occurred in China. Accordingly, the Court considered that the case involved the interests of Chinese legal persons, and found that Ericsson was unable to show that there would be serious difficulties for the Chinese courts to determine the facts and apply the law. Ericsson's attempt to rely on the doctrine of forum non conveniens was accordingly dismissed.

In the case of *Beijing Shentong Culture Club Co., Ltd. v. Zhou Songjian,* the court stated that Beijing Shentong Culture Club Co., Ltd. was a legal person incorporated in Mainland China, and that the outcome of the case thus involved the interests of Mainland Chinese legal person such that the doctrine of forum non conveniens did not apply. Similarly, in Chang *An Ship Holdings Corporation v. Qingdao Huiquan Shipping Company,* the court found that the defendant company was a Chinese legal person and had a direct interest in the outcome of the case. Therefore the doctrine of forum non conveniens was again not applied.

In addition, even if the Chinese persons or entities are not themselves parties to the dispute, but merely third parties, the doctrine of forum non conveniens may nonetheless not be applied. As an example, in *Australia Duro-Felgra Pty Ltd v. Dalian Huarui Heavy Industry International Trading Co,* the fact that one of the third parties which was not directly involved in the trial was a Chinese entity was one of the reasons why the court considered that the case involved "the interests of Chinese parties". This case demonstrates that judges had a great deal of discretion in applying the six elements of forum non conveniens as it previously operated.

Further development of the principle of forum non conveniens in China

The Civil Procedure Law of the People's Republic of China (Amended 2023) set out the principle of forum non conveniens in statutory form for the first time. Importantly, significant amendments to the principle's application were made:

The Interpretation of the Supreme People's Court on the Application of the Civil Procedure Law of the People's Republic of China (As of 2022)	The Civil Procedure Law of the People's Republic of China (Amended 2023)
Article 530: Where a foreign-related civil case meets the following circumstances at the same time, the people's court may rule to dismiss the plaintiff's lawsuit and advise him or her to file a lawsuit in a more convenient foreign court: (1) The defendant filed a request that the case should be under the jurisdiction of a more convenient foreign court or filed a jurisdictional challenge;	Article 282: Where a people's court accepts a civil case involving a foreign country, and the defendant raises a jurisdictional challenge and there are also the following circumstances, it may rule that the lawsuit should be dismissed, and advise the plaintiff to file a lawsuit in a more convenient foreign court: (1) The basic facts in dispute in the case did not occur in the territory of the PRC, and it is inconvenient for the people's

(2) There was no agreement between the parties to choose the jurisdiction of the courts of the PRC; (3) The case did not fall within the exclusive jurisdiction of the courts of the PRC; (4) The case does not involve the interests of the State, citizens, legal persons or other organizations of the PRC; (5) The main facts in dispute in the case did not occur in the territory of the PRC, and the case does not apply the laws of the PRC, so that the people's court hearing the case has significant difficulties in determining the facts and applying the law; (6) The foreign court has jurisdiction over the case and it is more convenient to hear the case.	court to hear the case and for the parties to participate in the litigation; (2) There is no agreement between the parties to choose the jurisdiction of the people's court; (3) The case does not fall within the exclusive jurisdiction of the people's court; (4) The case does not involve the sovereignty, security or social / public interests of the PRC; (5) It is more convenient for the foreign court to hear the case. If, after the decision to dismiss the action, the foreign court refuses to adopt jurisdiction over the dispute, or fails to take the necessary measures to hear the case, or fails to settle the case within a reasonable period of time, and the party then sues again in the people's court, the court shall accept the case.

As can be seen from the table above, the new rules have deleted "the interests of citizens, legal persons or other organizations" in the fourth element, and instead emphasize the protection of national sovereignty, security and social public interests. The new rules have also deleted the fifth element, i.e., the non-application of Chinese law as a factor giving rise to a major difficulty in the application of the law. With the continuing improvement in the expertise of Chinese lawyers involved in foreign disputes and the greater adoption of foreign law in disputes involving Chinese parties, the obstacles to determinations as to foreign law have largely been ameliorated. Certain courts have also set up tribunals specifically for cases involving foreign legal systems, such that the non-application of Chinese law to a case is no longer an "inconvenient" circumstance which might engender a finding of forum non conveniens. In addition, article 282(2) improves the avenues for subsequent relief from the application of the principle of forum non conveniens. If a foreign court refuses to exercise its jurisdiction, the Chinese court will exercise jurisdiction over the case.

China has, by legislation, appropriately extended the conditions under which a finding of forum non conveniens will apply. However, it will take the time to find out exactly how the courts will apply this legislation moving forward.

Art-Mosaic v. Hongguan Trading (2022)*

Foshan Intermediate People's Court (2021) Yue 06 Xie Wai Ren No.1

[Recognition of a foreign arbitral award concerning an international purchase contract and involving issues of representation powers and lack of due notice]

Liu Dingmin (Lear)

The Contract and Dispute

On 7 September 2017, Art-Mosaic Co., Ltd. ("**Art-Mosaic**"), an Uzbekistan-based company, executed a purchase contract (the "Contract") via email with a Chinese individual named Liu Shaoqing to buy raw materials for glass production. According to the Contract, Hongguan Trading Co., Ltd. ("**Hongguan Trading**"), a Chinese company, would be both the manufacturer and consignor of the goods.

The Contract specified, inter alia, Hongguan Trading's business address and the particulars of its bank account with Barclays Bank PLC. In addition, the Contract also contained an arbitration clause providing that "*in case the dispute cannot not be settled through negotiation, the dispute shall be submitted to the court of arbitration at the place of the either the claimant or the respondent for adjudication.*"[1]

On 1 November 2017, Art-Mosaic paid the contract price of USD18,268 to the afore-mentioned bank account. However, it did not receive the goods or any refund from Hongguan Trading thereafter.

Arbitral Proceedings

On 22 November 2017, Art-Mosaic filed a Request for Arbitration against Hongguan Trading with the International Commercial Arbitration Court at the Uzbek Chamber of Commerce and Industry ("**ICAC Uzbekistan**") seeking damages of USD 21,191. This sum was comprised USD18,268 for the goods and USD 2,923 for liquidated damages. It appears that Hongguan Trading did not participate in the arbitration.

On 24 January 2020, the Arbitral Tribunal issued an award in favour of Art-Mosaic, ordering Hongguan Trading to pay to a total compensation of USD 21,191 plus UZS 2,113,348 (approx. USD 222)2 for the arbitration fees.

Initiation of Court Proceedings and Position of the Parties

On 23 April 2021, as Hongguan Trading had failed to pay the sums due under the Arbitral Award, Art-Mosaic initiated proceedings for recognition and enforcement before the Foshan Intermediate People's Court (the "**Foshan IPC**" or "**Court**"). In the Court proceedings, Hongguan raised the following objections to the enforcement application.

(1) The arbitration agreement in the Contract was not binding on Hongguan Trading. The Contract

was not entered into between Art-Mosaic and Hongguan Trading because it was not stamped with Hongguan Trading's company chop or contract chop. Instead, the Contract was signed by Liu Shaoqing, an employee with another Chinese company, Foshan Meijing Building Materials Co., Ltd. ("**Meijing Co**").

(2) Hongguan Trading had never received any payment from Art-Mosaic for the disputed goods. The bank account details specified in the Contract were not those of Hongguan Trading which had never opened an account with any overseas banks.

(3) Hongguan Trading was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings, rendering it unable to present its case. Hongguan Trading had not received any documentation relating to the arbitration, including the hearing notice and the Arbitral Award. Even if the Court were to find that the company had received the arbitration documentation, such documentation was disregarded because it was in a language other than Mandarin or English.

The evidence Art-Mosaic adduced included the Contract, the payment order for the contract price, notices of the appointment of arbitrator(s) and of the arbitral hearing, the relevant courier record regarding the delivery of the arbitration notices, and the Arbitral Award. In further support of its application, Art-Mosaic also submitted (i) the air tickets and travel itinerary of its principal, Kim Gennadiy Aleksandrovich, who had travelled to meet with Liu Shaoqing in 2014 and 2017 at her office and factory in Foshan city and obtained goods samples from her; and (ii) a copy of Liu Shaoqing's passport and Wechat account screenshot.

In response, Hongguan Trading presented the following evidence to prove Liu Shaoqing was neither its employee nor authorized to sign the Contract on its behalf: (i) communication record between Hongguan Trading's personnel and Liu Shaoqing on social media platforms, and (ii) Hongguan Trading's record of social insurance subscription for its employees.

Liu Shaoqing does not appear to have given testimony in Court on Hongguan Trading's objections.

Court Analysis

When examining the enforcement application, the Foshan IPC made the following findings:

(1) The Contract bore the signature of Liu Shaoqing at the bottom of each page. Hongguan Trading alleged that Liu Shaoqing was an employee of Meijing Co. However, the Court found the record of social insurance subscription inadmissible as it was prepared by Hongguan Trading without any stamp of the social insurance administration.

(2) Hongguan Trading submitted that it had a long-term business relationship with Meijing Co which included the provision of export services and tax rebate applications.Considering Hongguan Trading's past dealings with Meijing Co and Liu Shaoqing, as well as the industry practices of the import and export trade, it could not be ruled out that Hongguan Trading might have entrusted its business chop to Liu Shaoqing for disposition and control. Hongguan Trading may also have authorized Liu Shaoqing to enter into contracts. Hence, the Court found that Art-Mosaic had sufficient grounds to believe that Liu Shaoqing had been duly authorized to sign the Contract on Hongguan Trading's behalf.

(3) The Contract was stamped with Hongguan Trading's business chop, as opposed to its company chop or contract chop. However, Art-Mosaic as a foreign company should not be burdened with distinguishing between the legal implications of different chops used by Chinese companies. Given that the Contract already bore Hongguan Trading's business chop, Art-Mosaic had reasonable grounds to believe that the chop demonstrated Hongguan Trading's consent to the Contract. Accordingly, the Contract containing the arbitration clause was found to be binding on Hongguan Trading.

(4) Art-Mosaic had presented sufficient evidence to show that its principal had repeatedly communicated with Liu Shaoqing and obtained specimens for goods from her before concluding the Contract. Considering Hongguan Trading's business address and the bank account beneficiary's address specified in the Contract were indeed the company's registered and actual business address, the Court found that Art-Mosaic had exercised due diligence in concluding the Contract.

(5) The notices of arbitrator appointment and for the arbitral hearing had been successfully delivered via courier to Hongguan Trading's registered business address on 28 November 2017. The Arbitral Award was also successfully delivered to Hongguan Trading on 6 July 2020. Hongguan Trading was still operating at its registered business address and had failed to prove that it had not received the aforementioned arbitration documentation.

(6) As a company specialized in the import and export business, Hongguan Trading should have exercised a greater degree of care and attention to documents from abroad or written in foreign languages. Therefore, the company should bear the consequences of having failed to take note of or respond to the arbitration.

Decision of the Court

On 28 February 2022, the Foshan IPC ruled to recognize the Arbitral Award based on Articles I, IV, and V of the New York Convention (1958) and Articles 157(1)(xi) and 290 of the PRC Civil Procedure Law (2021).

Commentary

This case is one of the first "typical cases" published by the Supreme People's Court in early 2024 on judicial review of arbitration,ranging from the annulment and enforcement of arbitral awards to the verification of the validity of an arbitration agreement. The case concerns the recognition and enforcement of an Uzbekistan arbitral award under the framework of the New York Convention (1958), and serves as a positive example of the PRC courts' application of international conventions in determining the enforceability of foreign arbitral awards. It also exemplifies the Court's efforts in providing judicial services and safeguards for the "Belt and Road" initiative.

Further, it is encouraging to note that the Court imposed a more lenient standard when examining Art-Mosaic's exercise of due diligence in concluding contracts with Chinese parties, particularly with respect to company stamps. This follows from recognising that Art-Mosaic would not have been familiar with the niceties of the various chops used by Chinese companies. That said, the Court's focus on the factual aspects of the dispute meant that it did not specifically assess what law applies to determine the alleged lack of authority on the part of Liu Shaoqing when the Contract was

signed. Beyond that, in applying Article V of the New York Convention (1958), the Court appears to have not considered the applicable law of the arbitration agreement in determining the establishment and binding effect of the disputed arbitration clause.

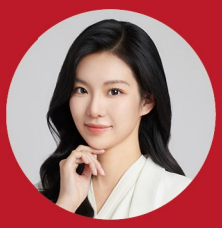
A further point of interest in relation to this case is that the Court only granted Art-Mosaic's request for recognition of the Arbitral Award in its the holding, despite Art-Mosaic having applied for recognition and enforcement of the Arbitral Award. This approach may be said to deviate from general practice of other PRC courts, and may be explained by the Court's inclination to treat recognition as a prerequisite to enforcement under Article 546(1) of the Supreme People's Court's Interpretation on the PRC Civil Procedure Law (2020).

□ 乌兹别克斯坦艺术马赛克有限公司申请承认和执行乌兹别克斯坦工商会国际商事仲裁院仲裁裁决案□（2021）粤 06 协外认 1 号 [Art-Mosaic Co., Ltd.'s Application for Recognition and Enforcement of an Arbitral Award of the International Commercial Arbitration Court at the Uzbek Chamber of Commerce and Industry], (2021) Yue 06 Xie Wai Ren No.1,*(https://wenshu.court.gov.cn/).

1 Author's translation of the Chinese wording in the court decision.

2 Exchange rate of the Central Bank of Uzbekistan applicable on the payment day of the arbitration fees: USD 1 = UZS 9519.6.

AUTHORS



Lv Siqiong（Shanghai）
+86 21 3886 2246
lvsiqiong@jtn.com

Alan Li（Shenzhen）
+86 755 2348 2627
lilan@jtn.com

Luo Yaqing（Shenzhen）
+86 755 2223 5518
luoyaqing@jtn.com

Liu Dingmin（Shenzhen）
+86 755 2223 5518
liudingmin@jtn.com


JT&N 金诚同达