2024 second half-year Hong Kong arbitration round-up

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Introduction

In the second half of 2024 the Hong Kong courts continued to demonstrate their unwavering support for arbitration, delivering a series of decisions that reaffirm the jurisdiction's role as a leading international arbitration hub. These rulings reflect the courts' consistent commitment to upholding party autonomy, enforcing arbitration agreements, and preserving the finality of arbitral awards, all cornerstones of Hong Kong's arbitration-friendly legal regime.

This round-up provides a structured overview of key decisions across different stages of the arbitral process, from the enforcement of arbitration agreements and the grant of interim measures in support of arbitral proceedings, to challenges against awards and the enforcement of settlement agreements arising from arbitration.

At the commencement stage, the courts have remained steadfast in upholding arbitration clauses, even where parties invoke inconsistent or overlapping dispute resolution provisions. The judiciary has continued to endorse a pro-arbitration presumption in interpreting such clauses, while reiterating that arbitration cannot proceed where no genuine dispute exists.

During ongoing proceedings, the courts have adopted a pragmatic approach to granting interim relief – including in support of foreign-seated arbitrations – particularly where delay or asset dissipation could frustrate the arbitral process. However, they have also cautioned parties against procedural abuses that might undermine arbitral confidentiality or procedural fairness.

At the award and post-award stages, the courts have strictly enforced the principles of finality and minimal curial intervention. Applications to set aside or resist enforcement of arbitral awards are scrutinised rigorously, with delay, estoppel, and tactical conduct weighing heavily against applicants. The courts have also affirmed the enforceability of anti-set-off clauses and cautioned against unilateral or ex parte communications that compromise due process.

Collectively, these decisions reinforce the Hong Kong courts' sophisticated and arbitration-literate jurisprudence, strengthening the territory's position as a preferred seat and enforcement jurisdiction for international arbitration.

Honouring arbitration agreements

A defining feature of the Hong Kong courts' pro-arbitration stance is their consistent enforcement of parties' intention to arbitrate.

A recent example is *Tongcheng Travel Holdings Ltd v OOO Securities (HK) Group Ltd* [2024] HKCFI 2710. The dispute arose under an Investment Management Agreement (IMA) containing both an arbitration clause and a Hong Kong exclusive jurisdiction clause.

Tongcheng Travel sued OOO Securities in court for breach of the IMA. OOO Securities failed to respond, and default judgment was entered. On the same day OOO Securities commenced (but never served) separate proceedings against Tongcheng. Eighteen months later it applied to set aside the judgment and stay proceedings pursuant to section 20 of the Arbitration Ordinance (Cap 609) (incorporating article 8(1) of the UNCITRAL Model Law).

The court reconciled the apparently conflicting clauses, holding that the jurisdiction clause merely confirmed Hong Kong's supervisory role over arbitration. When both a stay and a set-aside are sought, the stay is considered first. If granted, the judgment is set aside; if not, the defence must have a real prospect of success.

Here, the court upheld the arbitration clause, found it binding, and ruled that Tongcheng should have commenced arbitration. Enforcing a default judgment would contradict the arbitration agreement.

Despite the delay, the court accepted OOO Securities' explanation of internal changes in management. It also held that unserved parallel court proceedings did not amount to a "first statement on the substance of the dispute" under article 8(1), and thus did not waive the right to arbitrate.

The court granted the stay and set aside the judgment, reaffirming the principle that only clear, unequivocal conduct will amount to abandonment of arbitral rights.

This approach extends to insolvency. In *Re Guy Kwok-Hung Lam* [2023] HKCFA 9 and *Re Simplicity & Vogue Retailing (HK) Co Ltd* [2024] HKCA 299, the courts applied a multi-factorial test. Arbitration agreements in debt instruments are respected unless the dispute is frivolous or abusive, balancing contractual autonomy with the integrity of insolvency law.

The UK Privy Council in *Sian Participation Corp (In Liquidation) v Halimeda International Ltd* [2024] UKPC 16; [2024] 2 Lloyd's Rep 65 adopted a different test, requiring disputes over debt to be genuine and substantial. This marks a divergence from Hong Kong law. In *Re Mega Gold Holdings Ltd* [2024] HKCFI 2286, the court stayed winding-up and bankruptcy petitions in favour of arbitration. The debtors had raised triable factual disputes and, although they delayed commencing arbitration, the court accepted their intention to arbitrate was genuine.

The court reiterated the high threshold for overriding arbitration in insolvency: the debtor's defence must be plainly hopeless to justify court intervention. If not, the matter proceeds to arbitration.

It takes two to tangle – arbitral award set aside for lack of dispute

While arbitration clauses are standard in commercial contracts, tribunals must ensure that jurisdiction is properly established. A clause alone does not create a dispute.

In *CMBICDHAW Investments Ltd v CDH Fund V Ltd Partnership and Others* [2024] HKCA 516, CMB, Fund, and Cattle entered into a co-investment agreement with an arbitration clause. CMB later sued L, X, C, and Management, individuals and entities not party to the agreement, in court for fraud. It did not sue Fund or Cattle.

Fund, Cattle, L, X, and Management initiated arbitration seeking an anti-suit injunction and a declaration of non-liability. The arbitrator found no jurisdiction over L, X, or Management but issued a declaration in favour of Fund and Cattle. CMB challenged this.

The Court of Appeal clarified that a "dispute" in arbitration must involve disagreement, and mere silence or absence of claims is insufficient. Since CMB had not alleged wrongdoing by Fund or Cattle, no dispute existed when arbitration began, and the arbitrator's jurisdiction was not engaged.

The court held that Fund and Cattle's request for declaratory relief was an attempt to manufacture jurisdiction. The tribunal's findings were irrelevant to the court proceedings and risked improperly influencing them.

The appeal was dismissed. The case underscores that tribunals cannot issue awards absent a real dispute and must respect the courts' exclusive jurisdiction where applicable.

Courts grant injunction in aid of overseas arbitration

Hong Kong courts continue to support arbitration by granting interim measures, including in aid of foreign-seated proceedings under section 45 of the Arbitration Ordinance.

In *Company A and Another v Company C* [2024] HKCFI 3505, plaintiffs commenced arbitration under the Rules of the International Centre for Dispute Resolution of the American Arbitration Association against the defendant and SZ (its indirect owner), seeking US$55 million. The defendant counterclaimed for US$2 million.

While arbitration was ongoing, SZ announced plans to dispose of the defendant's shares and assets. Concerned this would frustrate enforcement, the plaintiffs sought emergency relief, including an asset transfer injunction and US$55 million in escrow.

The tribunal allowed the plaintiffs to seek relief from the Hong Kong courts. On 24 May 2024 interim injunctions were granted. On 27 May a formal application under section 45 sought a transfer ban and a worldwide Mareva injunction. On 31 May the defendant agreed to undertakings preserving its assets.

Meanwhile, the tribunal prepared to grant preliminary relief and issued procedural orders for an escrow arrangement. However, by October, the parties had not finalised those terms, and the defendant had not complied.

The court considered whether it was more appropriate for the tribunal to deal with interim relief (section 45(4)(b) of Arbitration Ordinance) but found that the tribunal's hands were tied by the defendant's non-cooperation. It described the defendant's conduct as obstructive and held that court intervention was necessary to preserve the status quo.

Even if the tribunal had granted interim relief, the court noted it could enforce it under section 61.

This case reflects the court's pragmatic approach: it respects the tribunal's primary role while stepping in where necessary to uphold the integrity of the arbitral process.

Arbitral confidentiality and parallel proceedings

Parallel arbitration and court proceedings may arise, particularly where urgent relief is sought. However, arbitral confidentiality is not absolute.

In *Beijing Songxianghu Architectural Decoration Engineering Co Ltd v Kitty Kam* [2024] HKCFI 1657, Beijing Songxianghu sued Kitty Kam in court for HK$253 million in fraud. It separately commenced HKIAC arbitration against Sunshine Success Global Inc, an entity related to Kitty.

A Mareva injunction was granted. Kitty sought to strike out the claim, discharge the injunction, and requested the hearing be private, anonymised, and redacted, by arguing that the parallel proceedings circumvented arbitral confidentiality.

The court rejected this. It found that different parties were involved in the arbitration and litigation, and the proposed "alter ego" amendment was not yet determined.

Citing *Asia Television Ltd v Communications Authority* [2013] 2 HKLRD 354 and article 10 of the Bill of Rights Ordinance, the court reaffirmed open justice as a fundamental principle. Confidentiality must give way where justified.

Section 18(2) of the Arbitration Ordinance and article 45.3 of the 2018 HKIAC Rules permit disclosure to pursue legal rights in court. Since Beijing Songxianghu had lawfully commenced litigation, the exception applied.

The court ruled that Kitty had not shown compelling reasons to override the open justice principle. It also referred to *CDE v NOP* [2021] EWCA Civ 1908; [2022] BLR 108, where confidentiality was held to carry less weight in hearings affecting substantive rights.

This case reflects the balance between arbitration's private nature and the need for transparency in judicial proceedings. Confidentiality will yield where open justice or legal rights are at stake.

Challenging award enforcement versus setting aside a settlement agreement

Many arbitrations end in settlement before a final award. The legal effect of such agreements, and how they interact with sections 66 and 81 of the Arbitration Ordinance, was considered in *L v R* [2024] HKCFI 1611.

R brought HKIAC arbitration against L. They reached a settlement under which all claims were withdrawn and each party bore their own costs. The agreement was governed by Hong Kong law and gave Hong Kong courts exclusive jurisdiction.

The tribunal terminated the arbitration under article 37.2(a) of the HKIAC Rules but issued a procedural order (PO 7) rather than a consent award, stating there were no terms to record. PO 7 included a final costs order.

L later sought to set aside both the settlement and PO 7, citing sections 66(2) and 81 of the AO. Leave was granted for service out of jurisdiction; R applied to set it aside.

The court confirmed L was entitled to serve out under Order 73 rule 7 of the RHC and needed only to show a serious question to be tried – a low threshold.

Applying *ZCCM Investments Holdings plc v Kansanshi Holdings Ltd* [2019] EWHC 1285 (Comm); [2019] 2 Lloyd's Rep 29, the court held PO 7 was a final award, as it definitively terminated the arbitration and dealt with costs.

Since the tribunal did not record the settlement as an award, article 30 of the Model Law did not apply. However, section 66(2) of Arbitration Ordinance may still allow enforcement of the settlement agreement as if it were an award.

The court found a serious question to be tried as to whether the statutory grounds for challenging an award under section 81

also applied to setting aside a settlement agreement. It refused to set aside the service out order.

The case highlights the distinction between *final awards*, which are challengeable under section 81 of the Arbitration Ordinance, *procedural orders*, which are enforceable under section 61, and *settlement agreements*, which may be treated as enforceable under section 66(2) even if not recorded as an arbitral award.

It also echoes reasoning in *G v N* [2024] HKCFI 721, where classification of a tribunal's decision determined the applicable legal regime.

While not a final ruling, the case underscores the need to carefully document settlements and understand the procedural consequences of how arbitration is terminated.

Appealability of award – meaning of "domestic arbitration"

Arbitration typically ends with an award, but a right of appeal is rare under the Arbitration Ordinance, unless parties opt into sections 5 and 6 of Schedule 2 or where Schedule 2 applies via section 100. The following case clarifies the meaning of "domestic arbitration" under section 100 and offers guidance on appeal rights in agreements predating the AO.

In *Sun Tian Gang and Others v Hong Kong & China Gas (Jilin) Ltd* [2024] HKCFI 1597, Sun applied for leave to appeal on questions of law under Schedule 2. The key issue was whether the arbitration agreement, made before the AO came into force on 1 June 2011, provided that arbitration was "domestic" within section 100(a).

The arbitration clause required disputes to be resolved by HKIAC arbitration in Hong Kong under the UNCITRAL Arbitration Rules and governed by Hong Kong law. Sun argued that, had the arbitration proceeded before the AO's commencement, it would have been a domestic arbitration, relying on factors including the parties' Hong Kong connections and the subject matter's close ties to Hong Kong.

The court rejected this argument. It held that the Arbitration Ordinance was enacted to abolish the distinction between domestic and international arbitration and adopt a unitary regime. Following *A v D* [2017] 1 HKLRD 779, the arbitration agreement must explicitly or implicitly "provide that" the arbitration was domestic. Mere eligibility under the repealed ordinance was insufficient.

The court emphasised that had the legislature intended to grandfather such pre-Arbitration Ordinance agreements into domestic arbitration status, section 100 would have expressly said so. It further dismissed constitutional arguments about access to the court, relying on *China International Fund Ltd v Dennis Lau & Ng Chun Man Architects & Engineers (HK) Ltd* HCMP 2472/2014. Limiting appeals is consistent with arbitration's nature, and parties can opt into appeal rights under Schedule 2.

As the agreement did not provide, expressly or impliedly, for domestic arbitration, Schedule 2 did not apply. The application for leave to appeal was dismissed.

This decision reaffirms that the Arbitration Ordinance's legislative intent is to limit court intervention, abolish dual regimes, and ensure procedural efficiency. Parties should carefully consider whether to permit appeal rights when drafting arbitration clauses.

Upholding finality of arbitral awards – approach to enforcement

Once an award is rendered and no appeal is pending, the award creditor may enforce it through the Hong Kong courts. However, the award debtor may apply to stay or set aside enforcement. The courts consistently stress that such applications must be prompt, well-grounded, and not used as tactical delays. Recent decisions illustrate the court's robust approach to preserving arbitration's finality and integrity.

Delay defeats enforcement challenge

In 宁波梅山保税港区和光泰润二号股权投资中心 v 北京微影时代科技有限公司 *and Others* [2024] HKCFI 2723, the applicant, 宁波梅山保税港区和光泰润二号股权投资中心 ("Centre"), obtained a favourable award dated 19 May 2022 in a dispute arising from its investment in the respondent, 北京微影时代科技有限公司 ("Beijing Weiying"). Upon ex parte application, the Hong Kong court issued an enforcement order on 29 July 2022, allowing Beijing Weiying 14 days from service to apply to set it aside.

Service was effected on 14 October 2022. Although Beijing Weiying indicated on 28 October 2022 that it intended to challenge enforcement, it did not file the application until 30 October 2023 – over a year after the deadline. It explained the delay by citing erroneous legal advice and disruption caused by the Covid-19 pandemic.

The court found these explanations unpersuasive. By the time Beijing Weiying indicated its intention to set aside, its set-aside application to the Beijing court had already been dismissed. The court held that the delay was not only unjustifiable but also bordered on being misleading.

Beijing Weiying also alleged that the Centre failed to disclose the Mainland set-aside application when seeking enforcement in Hong Kong. However, the court found the omission inadvertent and immaterial, noting that the enforcement order had been granted before the Beijing application was filed, and the respondent had suffered no prejudice.

A final argument that the award was not "binding" was also dismissed. The court reaffirmed the principle from *Societe Nationale d'Operations Petrolieres de la Cote d'Ivoire-Holding v Keen Lloyd Resources Ltd* [2004] 3 HKC 452, holding that an award is binding once it is no longer subject to appeal on the merits – an interpretation that remains valid under the current Arbitration Ordinance.

The court dismissed the application in full, underscoring the importance of procedural diligence and the limited grounds for resisting enforcement in Hong Kong.

Unjustifiable delay and estoppel sink set-aside bid over arbitrability claim

In *KZ v KY* [2024] HKCFI 1880, which is a case arising from a family dispute concerning the beneficial ownership of shares in a PRC company. The parties, KZ and KY, had entered into a Share Entrustment Agreement in 2005, pursuant to which KZ held shares in F International on behalf of KY. Subsequently, the relationship deteriorated, and KZ commenced arbitration in Mainland China, seeking a declaration that the shares were held by KY and an order for their transfer.

The arbitral tribunal issued an award in KZ's favour, which was affirmed by the Xiamen Intermediate People's Court. KZ then

sought and obtained leave to enforce the award in Hong Kong through an ex parte order on 10 September 2019. The order was served on KY on 20 March 2020, triggering a 14-day deadline for any application to set aside the order.

However, KY took no action until December 2023, ie 44 months after the deadline, when he applied for an extension of time to challenge enforcement. He claimed that he had been unaware of the enforcement order and that the underlying dispute was not arbitrable under PRC law, as it allegedly involved issues of inheritance and succession, which are non-arbitrable under article 3 of the PRC Arbitration Law.

The Hong Kong court rejected both arguments. On delay, the court held that KY had been actively engaged in various legal proceedings concerning the same shares, including a civil action in the PRC and related matters in Hong Kong, which undermined his claim of ignorance. The court found his inaction deliberate and tactical, amounting to an abuse of process.

On arbitrability, the court held that KY had failed to raise this objection either before the arbitral tribunal or in the PRC court during the enforcement proceedings. He was therefore estopped from raising it in the Hong Kong enforcement context. The court further noted that the PRC courts had not considered the dispute to involve succession, and had treated the matter as contractual in nature. The arbitrability objection was therefore devoid of merit.

Emphasising the serious prejudice that would be caused to KZ by further delay, and the lack of any satisfactory explanation, the court refused to grant an extension of time. The case reinforces the principle that parties must act promptly and cannot raise jurisdictional objections opportunistically at the enforcement stage.

Undermining due process with ex parte communications

Parties shall also be wary of a less common yet disastrous procedural matter during the arbitration – ex parte communications between the parties and the tribunal or the administering institution. As shown by the following case, it may overstep the boundary of due process, and result in the setting aside and/or unenforceability of an award.

In *A v R1 and Another* [2024] HKCFI 1511, A initiated arbitration in 2011, but failed to pay the arbitration fees within the stipulated time. Instead of terminating the proceedings, A entered into a private deferral agreement with SCIA, without notifying R2. SCIA also granted the tribunal a time extension to render the award beyond the five-month limit prescribed by the 2011 SCIA Rules – again without informing the other party.

The tribunal eventually issued the first award in January 2019, over seven years after its constitution. A later commenced a second arbitration seeking interest on the awarded amount, and obtained a second award. A then successfully obtained leave to enforce both awards in Hong Kong.

R2 applied to set aside the enforcement orders under section 95 of the Arbitration Ordinance (Cap 609), citing serious procedural irregularities. It argued that the ex parte communications between A and SCIA and the extraordinary delay in the proceedings had deprived it of the opportunity to raise procedural objections, including limitation defences and objections to the tribunal's continued jurisdiction.

The court agreed. It found that the private arrangement between A and SCIA, together with the tribunal's reliance on it, had compromised the structural integrity of the arbitration. R2 had not been given an opportunity to challenge the deferral or the extension of time, and was unaware that the tribunal was still active. The court held that such conduct violated the fundamental principle of equal treatment and contravened Hong Kong's basic notions of justice under section 95(2)(b) of the Arbitration Ordinance.

As for the second award, the court noted that the tribunal failed to address R2's argument that any interest claim was tainted by A's own delay in pursuing the claim. This further reinforced the procedural unfairness.

While the court acknowledged that certain ex parte communications may be permissible (eg, in arbitrator appointments under article 11.5 of the HKIAC Rules), it stressed that unilateral communications affecting the substance or procedure of the arbitration process are impermissible.

Accordingly, both enforcement orders were set aside. The case serves as an important reminder that due process violations – particularly those involving lack of notice and transparency – may render an otherwise valid award unenforceable in Hong Kong.

Baseless attempts to set aside enforcement

In *IO v Contractor* [2024] HKCFI 1802 the court dealt with a frivolous and unmeritorious application to set aside enforcement of an arbitral award. The dispute arose from a construction contract. The Contractor commenced arbitration but failed to prove its claims. The tribunal dismissed the claims and upheld IO's counterclaim, awarding damages and costs.

IO obtained leave to enforce the award in Hong Kong, but the Contractor applied to set aside the enforcement order. It argued that its managing director had not been advised to attend the hearing, resulting in an unfair process. It also alleged that the arbitrator had misunderstood the evidence and made findings beyond the scope of the arbitration.

The court found that the Contractor had been legally represented throughout the proceedings and had received proper notice of the hearing. Any decision not to attend the hearing or lead evidence was a matter of litigation strategy, not procedural unfairness. The court reiterated that errors of law, fact, or evidence evaluation fall outside the grounds for setting aside under the Arbitration Ordinance.

The allegation of excess of jurisdiction was also found to be baseless. The court referred to *Grant Thornton International Ltd v JBPB & Co* HCCT 13/2012, reaffirming that a tribunal does not exceed its mandate merely because a party disagrees with its interpretation of the issues submitted. The tribunal had acted within the scope of the arbitration agreement.

The court dismissed the application, warning that abuse of the set-aside mechanism would be met with robust judicial response to protect the efficiency and finality of arbitration.

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