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Singapore High Court decides that an arbitration clause misnaming an arbitration institution is valid

1. In the case of **Re Shanghai Xinan Screenwall Building & Decoration Co, Ltd [2022] SGHC 58**, the Singapore High Court interpreted a potentially defective arbitration clause which referred disputes to a non-existent institution, the "China International Arbitration Center", as an agreement to submit disputes to CIETAC arbitration and therefore upheld an award issued by a CIETAC Tribunal.

Factual and procedural background

2. The dispute arose out of two construction contracts entered between Shanghai Xinan, a Chinese company, and Great Wall, a Singapore company. The arbitration clauses contained in the two construction contracts were identical and read as follows:

"Any dispute arising from or in relation to the contract shall be settled through negotiation. If negotiation fails, the dispute shall be submitted to China International Arbitration Center for arbitration in accordance with its arbitration rules in force at the time of submission."

3. The "China International Arbitration Center" does not exist. Shanghai Xinan commenced proceedings before the China International Economic and Trade Arbitration Commission (**"CIETAC"**) and obtained an arbitral award against Great Wall, who did not participate in the arbitration proceedings. In the award, it was recorded that CIETAC found that it had jurisdiction over the dispute.

4. Shanghai Xinan sought to enforce the award in Singapore and obtained leave from the Singapore Court under section 19 of the International Arbitration Act (**IAA**). Shortly thereafter, Great Wall filed an application to set aside the order granting leave pursuant to section 31 of the IAA.

Parties' arguments

5. Amongst others, Great Wall ran the argument that the arbitration agreements were not valid under Chinese law (the proper law of the arbitration), and therefore fell within s.31(2)(b) of the IAA. This provides that courts may refuse enforcement of a foreign award if the party against whom enforcement is sought proves to the court that "the arbitration agreement is not valid under the law to which the parties have subjected it or, in the absence of any indication in that respect, under the law of the country where the award was made".

6. Article 16 of the Arbitration Law of the People's Republic of China provides that parties must select an arbitral institution. Article 18 provides that, where no institution is selected in the original arbitration agreement or a supplemental agreement, the arbitration agreement will be null and void.

7. Here, the arbitration agreements provided for the dispute to be submitted to the "China International Arbitration Center" where no such institution exists. Great Wall argued that the arbitration agreements were void under Chinese law and should not be enforced in Singapore.

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Court's Decision

8. The Singapore High Court rejected the argument which was run by Great Wall. Justice Philip Jeyaretnam held that the matter before him was one of construction and therefore it was for the Singapore Court to construe the arbitration agreements in the contracts to determine whether the objective intention of the parties was to refer disputes to CIETAC. He found that the arbitration clauses showed that the parties had intended to resolve their disputes by arbitration in China, at the institution they called the "China International Arbitration Center". The Judge pointed out that the parties would not deliberately have chosen a non-existent institution but must have intended to choose an existing arbitral institution, which they misnamed. The question was therefore whether the arbitration agreements "evince a common intention that CIETAC would be that arbitral institution".

9. The Court noted the close similarities between the words used in the arbitration clause ("China International Arbitration Center") and the name of CIETAC, noting that the first two words i.e., "China International" were identical, and "Arbitration" was in both names. The Judge then looked at a list of five major arbitral institutions in China that had been provided by Great Wall's Chinese counsel. Of the four other major arbitral institutions, three were named after cities instead of the nation. The other arbitral institution had the word "Maritime" in its name and was thus not likely to be chosen by parties involved in non-maritime disputes, as here.

10. The Court concluded that the parties had agreed on CIETAC as the arbitral institution. It reiterated that this was not a matter of choosing a non-existent arbitral institution, but rather giving an agreed arbitral institution a wrong name. This inaccuracy in the name did not nullify the parties' consent to arbitration or their choice of institution.

Key takeaways

11. This case demonstrates that relying on defects in the arbitration agreement and refusing to participate in the arbitration proceedings, with a view towards setting aside the award or challenging its enforcement, can be a dangerous strategy to adopt. This is particularly the case in jurisdictions like Singapore and Hong Kong, where the courts have shown that they will, where possible, give effect to a clear intention to arbitrate.

12. This case also underscores the importance of careful drafting when including an arbitration clause in a contract. A similar situation can be easily avoided by taking steps to confirm the arbitral institution's name on its website when entering the contract. This will avoid the costly and time-consuming exercise of dealing with such defects, either in a jurisdictional challenge before the tribunal or before the courts at the enforcement stage.

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