

HONG KONG HIGH COURT APPOINTS RECEIVERS AS INTERIM MEASURE IN SUPPORT OF ARBITRATION PROCEEDINGS IN MAINLAND



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A recent judgment from the Hong Kong High Court (*Chen Hongqing v Mi Jingtian*) illustrates the manner in which parties may seek interim relief in Hong Kong to support arbitral proceedings being conducted elsewhere – in this case, the appointment of receivers in connection with a CIETAC arbitration in Mainland China. The decision illustrates the wide-ranging power of the Hong Kong courts to grant measures to preserve assets or evidence (or simply to preserve the status quo between parties) in support of foreign arbitral proceedings, which will be of particular interest to parties arbitrating in Mainland China given the relatively limited powers of the PRC Courts to grant equivalent interim relief.

Background

The dispute concerned shares held in China Shanshui Investment Company Limited ("CSI") by an individual named Mr Zhang. Proceedings had been commenced against Mr Zhang in the Hong Kong courts by certain individuals who claimed that his shares were merely held on trust and that he had sought to deprive them of an alleged beneficial interest. That litigation resulted in the appointment of receivers over 45.63% of the shares in CSI. CIETAC arbitration proceedings were commenced in respect of a remaining portion of the shares held by the Defendants.

The CIETAC arbitration had been filed under a share pledge and guarantee agreement that had been signed in 2015. In support of those proceedings, the Claimant filed an application

to the Hong Kong Court requesting the appointment of receivers in respect of the Defendants' shares in CSI; and an order restraining the Defendants from taking any steps to cause or procure the transfer, charge or assignment of their shares, or from otherwise encumbering or dealing with the shares, save for complying with the requests of the receivers to be appointed.

In response, the Defendants argued (amongst other things) that receivership was a drastic and draconian form of interim relief which should not be granted lightly, and that in any event the Hong Kong court was not the proper forum for the Claimant to seek such relief, which should instead have been sought from the CIETAC tribunal or from a PRC court.



Decision

On 27 June 2017, Justice Mimmie Chan ruled that, "*[h]aving considered the entire circumstances of this case, I am satisfied that the appointment of receivers to exercise the voting and other rights in the [pledged] Shares is an interim order that may be granted by the court in Hong Kong in relation to arbitral proceedings. Bearing in mind that the [pledged] Shares are of a company in Hong Kong, the interim appointment of receivers of such [pledged] Shares will facilitate the process of the arbitral tribunal or the Mainland court that has primary jurisdiction over the Arbitration, and it is just for the court to grant such an interim order to maintain and preserve the status quo.*"

In relation to the argument that the relief should have been sought from the arbitral tribunal or the PRC Court, Justice Mimmie Chan cited s.45 of the Arbitration Ordinance, which she said made clear that the Hong Kong courts had both the jurisdiction and the power to grant interim measures in relation to "*any arbitral proceedings which have been, or are to be, commenced outside Hong Kong*". She specifically addressed the Defendants' argument that the Hong Kong court might "*[usurp] the jurisdiction of the Mainland court*" by recognising that the CIETAC tribunal had primary jurisdiction over the substantive dispute (and that the Mainland court had supervisory jurisdiction over those proceedings), but that the powers of the Hong Kong court existed "*ancillary to the arbitral proceedings outside Hong Kong, and... for the purpose of facilitating the process*". In the present case, the fact that CSI was a Hong Kong company made Hong Kong the appropriate

forum in which to seek the intended interim relief.

With regard to the argument that receivership is a drastic and draconian form of relief, the court concluded that putting the shares in the hands of receivers would be the best manner of preserving the value of the shares and, as such, would be in the interests of the beneficial owners. Amongst other things, Justice Mimmie Chan considered that CSI was an investment holding company, whose sole function was to hold shares in other entities, such that any adverse impact would be far less than in the case of a company with active business interests.

Under the circumstances, the court trusted that the receivers, acting independently and under the supervision of the court, would be in the best position to preserve the value of the shares. In making this order, Justice Mimmie Chan also nullified documents executed by the Defendants which purported to transfer the shares to a third party. In doing so, she relied upon article 17 of the Model Law (incorporated as s.35 of the Arbitration Ordinance) which empowers the court to grant an order to "*maintain or restore the status quo pending determination of the dispute.*" In the circumstance of the present case, Justice Mimmie Chan concluded that the position existing immediately before the commencement of the arbitration reflected the *status quo*, such that any share transfer documents signed after that date would cease to have effect pending the resolution of the dispute.

Comment

The power of the Hong Kong court to grant interim relief in support of foreign arbitral proceedings is well established. As the present case illustrates, this can be a powerful tool for parties seeking to preserve assets, evidence or the *status quo* pending the outcome of arbitral proceedings. It is particularly noteworthy in the context of China-related disputes, given the relatively limited preservation measures available from the Mainland courts.

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