BRIEFING NOTE

Conflicting Arbitration Clause and Exclusive Jurisdiction Clause – Irreconcilable Inconsistency?

Justyn Jagger & Sinyee Ong
17 May 2021

Introduction

All too often commercial contracts include conflicting jurisdiction clauses. One for arbitration (i.e., the arbitration clause) and the other for court litigation (i.e., the exclusive jurisdiction clause). In that situation, which takes precedence?

Recently, the English Court discussed the dynamics between arbitration and exclusive jurisdiction clauses in *Melford Capital Partners (Holdings) LLP and Others v Digby* [2021] EWHC 872 (Ch). We summarise the findings, as well as the practical implications, in this note.

Melford Capital Partners (Holdings) LLP and Others v Digby

In *Melford*, the contract included: (a) an arbitration clause, providing for all disputes arising out of the contract to be referred to arbitration administered by the LCIA; and (b) an exclusive jurisdiction clause, providing for the exclusive jurisdiction of English Courts to settle disputes arising out of the contract. One of the preliminary issues for determination was whether the arbitration clause could have any effect when juxtaposed with an exclusive jurisdiction clause.

The Court held that the starting point is to construe the contract so as to give effect to the interpretation that a reasonable person, having all background knowledge available to the parties at the point of contract, would have understood the contract to mean. Proceeding on that basis, the Court determined that by including both an arbitration and exclusive jurisdiction clause, the parties must have intended to give effect to both clauses.

In reconciling the two clauses, the Court held that the arbitration clause determined that disputes should be resolved by arbitration and the exclusive jurisdiction clause determined that the Courts should have supervisory powers over the arbitral process.

The Position in Singapore

The conclusion of the English Court in *Melford* is consistent with Singapore law.

In *BXH v BXI* [2020] SGCA 28, the Singapore Court of Appeal came to the same conclusion albeit from a different starting point. The starting point is that where parties have evinced a clear intention to submit their disputes to arbitration, courts should give effect to this intention.

In construing a contract with both arbitration and exclusive jurisdiction clauses, courts should seek to give effect to both clauses. That is, contractual disputes are to be resolved in accordance with the arbitration clause with the Singapore Courts exercising its supervisory jurisdiction under the exclusive jurisdiction clause.

Perhaps the point of distinction between the English and Singapore positions is that the Court's supervisory powers, particularly the grounds for an appeal of an arbitral award, are more limited under Singapore law, pursuant to the International Arbitration Act (Cap 143A), than under English law, pursuant to the Arbitration Act 1996.

Practical Implications

The *Melford* and *BXH* decisions lay to rest arguments raised by parties to avoid arbitration in the face of a seemingly conflicting exclusive jurisdiction clause. Despite their slightly different starting points, the English and Singapore Courts are united in their conclusions that an arbitration clause should not be displaced by an exclusive jurisdiction clause and that the Courts should support, not usurp, the Tribunal's power to determine the issues in dispute.

How We May Assist

As arbitration specialists, we often assist with drafting arbitration clauses and acting as lead counsels in various arbitration proceedings. From time to time, we also act as Singaporean counsels in foreign arbitration proceedings involving an element of Singapore law. We take pride in securing a cost-effective result that best advances our clients' commercial objectives.

To find out more about how we may be of assistance to you, please reach out to any member of our team.

Justyn Jagger

justyn.jagger@sjlaw.com.sg
65 6694 7282 | 65 9154 9695

Sinyee Ong

sinyee.ong@sjlaw.com.sg
65 6694 7281 | 65 9148 5059