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# Resolution of Disputes in Financial Contracts: Arbitration *vs* Litigation

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"For in one hour such great riches came to nothing." – Revelation 18:17

## Introduction

Since the beginning of 2020, we have been in a season of change. From the beginning of 2020 until mid-2023, the world endured three and a half years of Covid pandemic restrictions. In February 2022, the onslaught of the Russia-Ukraine military conflict led to economic sanctions, rising inflation and interest rates hikes, and escalated global geopolitical tensions. In March 2022, for the first time in history, London Metal Exchange ("LME") was forced to halt nickel trading and cancel contracts after sanctions caused a sudden spike in nickel prices and threatened to cause a wider systemic collapse of the financial markets.[1]

In March 2023, the rapid rise in interest rates resulted in the collapse of US banks, including Silicon Valley Bank,[2] and the near collapse of Credit Suisse[3] (with the bank's AT1 bondholders being wiped out).[4] Around the same time, the distress of China's dominant real estate developers threatens to cause widespread damage to the Chinese economy.[5] In October 2023, we witnessed the start of the Israel-Hamas war, which has the potential to become a far wider regional and global conflict.

In this bearish climate, it is timely for finance lawyers and other market participants to make contingency plans and prepare defensive strategies. An area of increasing importance is the use of arbitration in resolving financial contract disputes.

## Financial Contracts

"Financial contracts" cover a wide spectrum of contracts ranging from plain vanilla loan and bond contracts to complex hedging, derivative contracts and securitisation contracts.

The need for easier and more rapid trading has encouraged the standardisation of financial contracts. Examples of common standard-form financial contracts include:

(a) the Loan Market Association and Asia Pacific Loan Market Association contracts for loans;

(b) the International Swaps and Derivatives Association ("ISDA") contracts for derivatives and hedging; and

(c) the Global Master Repurchase Agreement and Global Master Securities Lending Agreement contracts for repo and securities lending.

The popularity of the ISDA Master Agreement has been attributed to the following reasons: (a) standardised documents enable quicker execution of trades; (b) the convenience of using a single standardised agreement to document a wide range of derivative transactions; (c) minimising credit exposure by using the close-out netting provisions under an umbrella ISDA Master Agreement; and (d) reducing "basis-risk" when doing secondary trading or hedging of the primary contract exposures (because secondary trades also use the same standardised documents).[6]

The traditional default choice of governing laws in standardised financial contracts is English or New York law, with English or New York courts having jurisdiction to settle disputes. However, in recent years, there is an increasing shift to replace court jurisdiction with arbitration. ISDA published its 2013[7] and 2018 Arbitration Guides[8] to facilitate the change of court jurisdiction to arbitration for parties using standard-form ISDA contracts.[9]

This chapter will examine whether arbitration is a better choice compared to court litigation for resolving disputes in financial contracts.

### 1. Time is of the essence

The valuation of financial instruments can be extremely volatile. This can be illustrated in the Ohio case of ***AEP v Bank of Montreal***.[10] The case involved a natural gas commodity derivative contract, under which a downgrade of AEP's credit rating would constitute an additional termination event. AEP's credit rating was downgraded on 10 February 2003. Evidence was produced to show that, on 10 February 2003, the mark-to-market value of the derivative contract was US$50 million in favour of AEP. Bank of Montreal delivered its termination notice on 14 March 2003. On 24 March 2003, Bank of Montreal sought payment of US$34 million from AEP when it delivered its calculation statement to AEP. In short, there was a swing of US$84 million within a period of just over one month. The *AEP* case demonstrates the valuation of financial contracts can be extremely volatile. When things go wrong, time is of the essence, and mistakes and delays can become very costly.

The acceleration, termination and close-out of financial contracts are the most commonly arising disputes in such contracts. If a financial contract was incorrectly terminated, such termination could subsequently be declared void by the court or arbitral tribunal. If a termination was declared void, it means that the financial contract remains alive. In such eventuality, the contracting party that thought that the contract had been terminated could be faced with unexpected additional losses. In a volatile market, the longer it takes to resolve such disputes, the greater the risk of potential losses to the losing party.

In terms of the speed of resolving disputes, it has been observed that "complex commercial cases can take just as long to arbitrate as they take to litigate in court, and can cost substantially more".[11] However, one difference is that court judgments can usually be appealed to higher courts and the entire appeal process could extend the litigation for months or years, whereas there is usually no appeal for arbitration.[12] The finality of arbitral awards means arbitration offers quicker closure and a shorter timeframe to resolve disputes in financial contracts.

## 2. Confidentiality

Arbitration is a private and confidential dispute resolution procedure, whereas litigation is a public process.

The filing of a court litigation itself is usually public information and is likely to cause embarrassment for the defendant. This may be used to apply additional pressure on a defendant and force the defendant to honour its obligations. Such a feature is not available in arbitration because of its private and confidential nature. This is one reason why a lender of a loan contract may prefer court litigation instead of arbitration.

However, the situation may be different in a derivative contract. In the New York case, ***High Risk Opportunities HUB Fund v Crédit Lyonnais***,[13] there was a dispute involving a derivative contract documented under the 1992 ISDA Master Agreement between Crédit Lyonnais Bank and High Risk Opportunities HUB Fund. The contract was a non-deliverable forward ("NDF") based on the exchange rate between US dollars and Russian ruble. The Fund was placed into voluntary liquidation, which triggered an event of default under the ISDA contract. Crédit Lyonnais declared an early termination and sought "market quotations" (as per the ISDA contract procedures to close out the contract).

The Supreme Court of the State of New York held that Crédit Lyonnais made two fundamental mistakes in closing out the derivative contract:

(a) Under the 1992 ISDA Master Agreement, "market quotation" is determined based on quotations from "Reference Market-makers". "Reference Market-makers" is defined as "**four** leading dealers in the relevant market". Crédit Lyonnais contacted 13 dealers for quotations.

(b) Crédit Lyonnais further instructed the dealers to consider exchange risk as a factor in valuing the NDFs and followed up with telephone calls to the dealers. The 1992 ISDA contract did not mention "exchange risk" for determining market quotations.

The court decided that the market quotations obtained by Crédit Lyonnais were invalid. It found that Crédit Lyonnais had failed to act in good faith, failed to follow the proper specified contract procedures, and interfered with the dealers' independent valuation of the NDFs.[14]

Apart from monetary losses, the public court judgment likely caused embarrassment to the bank.

In short, whether court proceedings or private arbitration is a better choice would depend on the types of financial contracts and the parties in question.

## 3. Choice of arbitrator(s)

In a court litigation, contracting parties usually have no choice as to the judge(s), whereas in an arbitration, contracting parties can choose their arbitrators (including setting various criteria for arbitrators).

Financial contracts can be complicated. In some cases, the fair and correct resolution of disputes related to financial contracts may require market practice knowledge, which may not be apparent from the face of the contract.

An example can be found in the conflicting judgments between the US and English courts in ***Lehman Brothers Special Financing Inc v BNY Corporate Trustee Services Ltd***[15] and ***Perpetual Trustees Co Ltd v BNY Corporate Trustee Services Ltd & Lehman Brothers Special Financing Inc***.[16] The subject matter in both cases related to a credit-linked synthetic securitisation programme, where Lehman Brothers Special Financing Inc ("LBSF") was the swap counterparty. Under the contractual terms of the transaction documents, the priority of payments (also known as "waterfall") provided that LBSF's interests (as swap counterparty) ordinarily rank ahead of the noteholders' interests. However, upon the occurrence of an event of default on the part of LBSF under the swap documents, the transaction documents provided that the waterfall positions were reversed such that LBSF's interest would rank subordinate to the noteholders' interest (i.e. the waterfall priority positions are "flipped" under such circumstances). The transaction documents were governed by English law, but the swap counterparty (LBSF) is a US entity that was in Chapter 11 proceedings under the US Bankruptcy Code. The US and English courts had to decide on the enforceability of this "flip clause".

In an earlier paper, I explained that the "flip clause" is market-standard for securitisations. The primary objective of this clause is to disincentivise default by a swap counterparty and ensure that the defaulting swap counterparty does not benefit from its own default by continuing to be paid at a senior position in the waterfall.[17] However, this commercial intention may not be obvious to non-securitisation practitioners.

The Supreme Court in England affirmed the ruling of the Court of Appeal and the English High Court, and held that the "flip clause" was valid and enforceable under English law and not contrary to public policy. Unfortunately, the US Bankruptcy Court did not appreciate the commercial rationale of the "flip clause", and held that the "flip clause" was "unenforceable and violate the *ipso facto* provisions of the [US] Bankruptcy Code".[18]

The US Bankruptcy Court decision surprised the securitisation industry. At that time, Moody's and Fitch warned of the adverse impact to the ratings of transactions with US domiciled counterparties as a result of the US court ruling.[19]

Fortunately, 10 years later,[20] in ***LBSF v Bank of America***,[21] the US Second Circuit panel (affirming the US District Court's decision)[22] overruled ***Perpetual Trustees Co Ltd v BNY Corporate Trustee Services Ltd & Lehman Brothers Special Financing Inc***.[23]

Putting aside the issue of whether or not a bankruptcy law dispute is arbitrable,[24] it is respectfully submitted that the surprise outcome in ***Perpetual Trustees Co Ltd v BNY Corporate Trustee Services Ltd & Lehman Brothers Special Financing Inc*** might have been different if the dispute was determined by arbitration before a tribunal of selected securitisation experts who are familiar with the market practice in securitisation transactions.

## 4. Flexible fee structures[25]

Compared to traditional court litigation, arbitration proceedings allow contracting parties more flexibility to enter into outcome-related fee arrangements with lawyers. This flexibility can help contracting parties to better manage their legal budgets when pursuing their claims.

Many jurisdictions still prohibit "no win no fee" arrangements for lawyers in court litigations.[26] In Hong Kong, the offence of maintenance or champerty is punishable by a fine and up to seven years' imprisonment under section 101I of the Criminal Procedure Ordinance (Cap. 221).

In an effort to promote arbitration, such prohibitions have been relaxed for arbitration proceedings. For example, in 2022, such restrictions were relaxed for arbitrations and related court litigations (e.g. applications to courts to enforce or set aside arbitral awards) under Hong Kong law[27] and Singapore law.[28]

Therefore, contracting parties wishing to have more flexible legal fee arrangements may find choosing arbitration a better option.

### 5. Winding-up proceedings[29]

A key attraction of arbitration is the widespread recognition and enforceability of arbitral awards founded in the 1958 New York Convention,[30] which has since been ratified by over 170 jurisdictions. However, where an insolvency issue arises, arbitration could become a problem.

Hong Kong was the first Asian jurisdiction to adopt into its legislation the 1985 UNCITRAL Model Law on International Commercial Arbitration ("Model Law")[31] through the Arbitration Ordinance (Cap. 609). Article 8(1) of the Model Law[32] provides:

> "*A court before which an action is brought in a matter which is the subject of an arbitration agreement shall, if a party so requests not later than when submitting his first statement on the substance of the dispute, refer the parties to arbitration.*"

Article 8(1) is intended to ensure that the choice of arbitration is binding on the contracting parties and to stop contracting parties from using any "back-door" to bring the dispute to the courts.

In the insolvency context,[33] if a debt arises under a financial contract that contains an arbitration clause covering all disputes arising from that contract, the creditor may elect to:

- commence arbitration proceedings to obtain an award that can then be enforced against the debtor's assets; or
- commence winding-up proceedings before the courts against the debtor with a view to having the debtor's assets distributed amongst all creditors (including the petitioning creditor) following the completion of the winding-up process under the insolvency regime.

From a creditor's perspective, the latter option (i.e. immediate winding-up) is preferable where the debtor is insolvent and does not have sufficient assets to repay all its debts because obtaining any arbitral award against an insolvent debtor would still end in winding-up proceedings. However, in pro-arbitration jurisdictions and relying on Article 8(1), the court's approach has been to give effect to the arbitration clause, and delay or dismiss the winding-up petition where the debtor raises any dispute on the debt.

In ***Lasmos Ltd v Southwest Pacific Bauxite (HK) Ltd***,[34] the Hong Kong High Court decided that the winding-up petition should be dismissed because the debtor company disputed the debt, and that the dispute must be resolved in accordance with the arbitration agreement. Relying on the English Court of Appeal decision in ***Salford Estates (No 2) Ltd v Altomart Ltd***,[35] the Hong Kong Court held that a winding-up petition should "*generally be dismissed*" if:

- the debtor disputes the debt relied upon by the petitioner;
- the contract out of which the debt allegedly arises contains an arbitration clause covering any dispute relating to the debt; and
- the debtor takes the steps required under the arbitration clause to commence the contractually mandated dispute resolution process (which might include preliminary stages such as mediation) and files an affirmation in accordance with Rule 32 of the Companies (Winding-Up) Rules, Cap. 32H demonstrating this.

Although there were subsequent Hong Kong judgments that cast doubts on *Lasmos*,[36] the *Lasmos* principles reflect the state of law in many other pro-arbitration jurisdictions.[37] By and large, the courts of pro-arbitration jurisdictions like Hong Kong, Singapore, UK and the Cayman Islands have taken the pro-arbitration stance and held that winding-up petitions should "*generally be dismissed*"[38] if the debtor disputes the debt that is subject to an arbitration agreement.

This has several consequences for the creditor:

(a) If the court decides that a creditor has wrongfully issued the winding-up petition, the creditor may be penalised with damages and costs.

(b) Besides the timing delay, undertaking arbitration proceedings is not cheap. Even if the debtor has a frivolous and unmeritorious defence, the arbitral tribunal will usually need to go through due process and allow the debtor to "ventilate" its case before issuing a final award.[39] The creditor (who has agreed to arbitration) will need to budget significant additional costs for the arbitration proceedings, before it can wind up the debtor.

(c) The timing delay may be significant and will increase the creditor's risk exposure to the debtor in a volatile market (as noted under "1. Time is of the essence").

The conflict between arbitration and insolvency is probably the single biggest disadvantage of choosing arbitration for financial contract parties.

## Expedited Procedures

Some arbitration institutions have tried to mitigate the undesirable effects of pro-arbitration policies for creditors by introducing summary judgment powers for arbitral tribunals in their arbitration rules.[40] Those familiar with court litigation would be aware of the summary judgment procedure, which is an expedited procedure available to a claimant in litigation proceedings if the defendant has no real defence.[41] The introduction of summary judgment powers in arbitration will be welcomed by creditors facing financially-distressed debtors who raise frivolous and unmeritorious defence. However, the creditor does not win its case if the final arbitration award becomes unenforceable for the breach of Article V(1)(b) of the New York Convention.[42] Hence, notwithstanding summary powers under arbitration rules, there is a limit to how far a tribunal can summarily decide the outcome of a dispute in an arbitration. The end result is that any summary process in an arbitration would still incur more time and costs for the creditor compared to a straightforward winding-up petition without arbitration.

## Asymmetric Unilateral Arbitration Option Clause

One solution may be to use a unilateral arbitration clause. A unilateral arbitration clause grants one party the exclusive right to decide between arbitration or litigation to resolve a dispute. This means one side can choose the forum for their dispute at the time the dispute arises, rather than at the time of negotiating the agreement.

Asymmetric unilateral arbitration option clauses have been enforced in various pro-arbitration jurisdictions, such as England, Hong Kong and Singapore.

In ***NB Three Shipping v Harebell Shipping Ltd***,[43] the English court upheld a unilateral option to arbitrate by granting a stay of litigation proceedings commenced by the claimant on the basis that the clause in question afforded the defendant a right to determine that a dispute be arbitrated. In ***Law Debenture Trust Corp v Elektrim Finance BV and others***,[44] the court granted an injunction to prevent the commencement of arbitration proceedings by one party in order to protect another party's exclusive right to refer the matter to the English courts.

In Hong Kong, ***China Merchants Heavy Industry Co Ltd v JGC Corp***[45] concluded that a clause giving one party a unilateral right to arbitrate falls within the meaning of Article 8(1) of the UNCITRAL Model Law. In ***China Railway (Hong Kong) Holdings Ltd v Chung Kin Holdings Co Ltd***,[46] the Hong Kong court also upheld an asymmetric jurisdiction clause.[47]

The Singapore Court of Appeal also upheld an asymmetric arbitration clause in ***Wilson Taylor Asia Pacific Pte Ltd v Dyna-Jet Pte Ltd***.[48]

However, asymmetric unilateral arbitration option clauses are not universally enforced or recognised. If the asymmetric unilateral arbitration clause is unenforceable or invalid, it could result in local courts taking jurisdiction over a dispute, or an inability to enforce an arbitral award.

In France, there is uncertainty on the enforceability of unilateral arbitration clauses. In the 2012 *Rothschild* decision (***Mme X v Banque Privée Edmond de Rothschild Europe***, n°11-26.022, 26 September 2012), the French Supreme Court held that a unilateral jurisdiction dispute resolution clause granting one party the unilateral right to refer disputes to any other court of competent jurisdiction was ineffective. Although this was not a decision concerning unilateral arbitration clauses, it created uncertainty on its validity under French law.[49]

In summary, while an asymmetric arbitration clause could be used to address the problems associated with the winding-up of an insolvent debtor, it is important to seek advice and evaluate whether such a clause is valid in all relevant jurisdictions that the financial contract relates to. In addition, an asymmetric arbitration clause that confers the "privilege" of an additional option right to one party may not be commercially acceptable if both parties have equal bargaining powers.

## Conclusion

Compared to traditional court litigation, arbitration is an attractive alternative option for contracting parties who desire a more expeditious finality in the resolution of any disputes, confidentiality, the ability to select arbitrators, and more flexible legal fee arrangements.

However, in an insolvency situation, the choice of arbitration can be problematic and should be evaluated carefully. For a contracting party with stronger bargaining power, one potential solution may be to use an asymmetric unilateral arbitration option clause in the contract, giving it a unilateral right to choose arbitration or litigation. The flexibility to choose litigation in an insolvency situation could overcome the problems that the arbitration/insolvency conflict brings.

Unilateral option clauses are currently still rare in financial contracts, and it is worth noting that the ISDA Arbitration Guides currently do not cover asymmetric unilateral arbitration option clauses. Contracting parties with stronger bargaining power and who wish to adopt arbitration as a way to resolve financial contract disputes, but retain an additional litigation option to resolve disputes, may wish to consider and utilise such clauses more in the future to overcome winding-up problems caused by arbitration.

* *The views expressed in this chapter are personal and should not be attributed to the organisations that the author is affiliated with. The law is stated as at 8 April 2024.*

## Endnotes

1. *Reuters*, "LME forced to halt nickel trading, cancel deals, after prices top $100,000", 9 March 2022. Available at: https://www.reuters.com/business/lme-suspends-nickel-trading-day-after-prices-see-record-run-2022-03-08/
2. *The Guardian*, "The first Twitter-fuelled bank run: how social media compounded SVB's collapse", 16 March 2023. Available at: https://www.theguardian.com/business/2023/mar/16/the-first-twitter-fuelled-bank-run-how-social-media-compounded-svbs-collapse
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5. *Asia Times*, "Evergrande bankruptcy fears spark a bank run in China", 14 Oct. 2023. Available at: https://asiatimes.com/2023/10/evergrande-bankruptcy-fears-spark-a-bank-run-in-china/
6. Kingsley Ong, "The ISDA Master Agreement: Insolvency Stalemate and Endgame Solutions for Hong Kong Liquidators", (2010) 40 HKLJ 337, at 338.
7. See https://www.isda.org/a/OkiDE/isda-arbitration-guide-final-09-09.pdf
8. See https://www.isda.org/2018/12/17/isda-publishes-2018-arbitration-guide
9. The standard form ISDA Master Agreement published by ISDA is the pre-eminent market standard contract used by the global derivatives market to document over-the-counter derivative transactions.
10. Ohio case 2:03-cv-00335.
11. Fish & Richardson, "Arbitration Risks: Why Arbitration is Not Necessarily Better, Faster, or Cheaper Than Litigation", 30 Nov. 2016. Available at: https://www.lexology.com/library/detail.aspx?g=d09fdf94-5789-47bf-b728-c6316a7c35da
12. In ***Employer v. Contractor*** [2023] HKCFI 2911, the Hong Kong Court of First Instance refused leave to appeal a construction award on points of law because the decision of the arbitrator on the relevant issues was not "obviously wrong" or "open to serious doubt".
13. No. 600229/00 (Sup. Ct. N.Y. County July 6, 2005).
14. "Loss" calculation method is the fallback under the 1992 ISDA Master Agreement where "market quotation" is unavailable.
15. SDNY 09-01242.
16. [2011] UKSC 38.
17. Kingsley Ong, "The ISDA Master Agreement: Insolvency Stalemate and Endgame Solutions for Hong Kong Liquidators" [2010] 40 HKLJ 337, see footnote 60.
18. US judgment handed down in January 2010.
19. See https://www.moodys.com/research/Moodys-Ongoing-uncertainty-over-flip-clauses-has-no-rating-impact--PR_210107
20. On 11 August 2020.
21. 2020 WL 4590247 - 2d Cir. Aug. 11, 2020.
22. 2018 WL 1322225 S.D.N.Y. 14 March 2018.
23. Fitch welcomed the reversal of the original US ruling. See Fitch, "U.S. 'Flip Clause' Court Decision a Positive Signal for Structured Finance", 19 August 2020. Available at: https://www.fitchratings.com/research/structured-finance/us-flip-clause-court-decision-positive-signal-for-structured-finance-19-08-2020
24. In Germany, insolvency administrators remain bound to any arbitration clause previously entered into by the insolvent company, and the opening of insolvency proceedings does not affect the arbitrability of a dispute. However, in USA, the Federal Bankruptcy Code provides a general rule that any proceedings (including arbitrations) brought against an insolvent party shall be stayed, with leave for a party to apply for relief from a stay. In France, "pure" bankruptcy issues that concern the application and exercise of the bankruptcy procedures are non-arbitrable, whereas contractual matters remain arbitrable. See Norton Rose, "Insolvency and international arbitration Tension between competing public policy interests", June 2020, available at: https://www.nortonrosefulbright.com/zh-hk/knowledge/publications/c984bc11/insolvency-and-international-arbitration

25. For a deeper discussion on this topic, see Kingsley Ong *et. al*, "The Intersection of Arbitration and Insolvency in Hong Kong: The Court's Discretion in Winding-Up Proceedings", Chapter 11 in TSANG, MORRIS, GIBB "*An Introduction to the Conflict of Laws in Hong Kong*" (2nd Edition, 2020), LexisNexis.
26. Due to concerns relating to the perversion of justice, endangering the integrity of judicial process, discouraging gambling on the outcome of a litigation. See ***Unruh v Seeberger*** [2007] 10 HKCFAR 31, at [100]-[101].
27. See Part 10B of Hong Kong Arbitration Ordinance (Cap. 609), available at: https://www.elegislation.gov.hk/hk/cap609?pmc=0&xpid=ID_1657179033918_001&m=0&pm=1
28. Section115(B)(1) of Singapore Legal Profession (Amendment) Act 2022.
29. For a deeper discussion on this topic, see Kingsley Ong *et. al*, "The Intersection of Arbitration and Insolvency in Hong Kong: The Court's Discretion in Winding-Up Proceedings", Chapter 11 in TSANG, MORRIS, GIBB "*An Introduction to the Conflict of Laws in Hong Kong*" (2nd Edition, 2020), LexisNexis.
30. "Convention on the Recognition and Enforcement of Foreign Arbitral Awards".
31. UNCITRAL Model Law on International Commercial Arbitration (1985), with amendments as adopted in 2006, available at: https://uncitral.un.org/sites/uncitral.un.org/files/media-documents/uncitral/en/19-09955_e_ebook.pdf
32. Incorporated into section 20 of the Hong Kong Arbitration Ordinance.
33. A party may wish to wind up a company for reasons of insolvency (when a debtor company is unable to pay its debts) or on a just and equitable basis (e.g. shareholder disputes). In financial contract disputes, insolvency is more common and this chapter will only discuss insolvency context – although it should be noted that the same challenges will apply to shareholder disputes where shareholders agreements have elected for arbitration.
34. [2018] HKCU 702, [2018] HKCFI 426.
35. [2014] EWCA Civ 1575, [2015] 1 Ch 589.
36. For example, ***But Ka Chon v Interactive Brokers LLC***, *Re Golden Oasis Health Ltd* [2019] HKCU 3416, ***Sit Kwong Lam v Petrolimex Singapore Pte Ltd*** [2019] 5 HKLRD 646, ***Dayang (HK) Marine Shipping Co Limited v Asia Master Logistics Limited*** [2020] HKCFI 311.
37. See ***Salford Estates (No 2) Ltd v Altomart Ltd*** [2014] EWCA Civ 1575, [2015] 1 Ch 589 (English Court of Appeal); ***Lasmos Ltd v Southwest Pacific Bauxite*** *(HK) Ltd* [2018] HKCU 702, [2018] HKCFI 426 (Hong Kong High Court); ***AnAn Group (Singapore) v VTB*** [2020] (Singapore Court of Appeal); ***RiverRock Securities Ltd v International Bank of St Petersburg (JSC)*** [2020] EWHC 2483 (Comm) (English High Court); and ***FamilyMart China Holding Co Ltd v Ting Chuan (Cayman Islands) Holding Corporation*** [2023] UKPC 33 (UK Privy Council on appeal from Cayman, concerning just and equitable winding-up).
38. ***Lasmos Ltd v Southwest Pacific Bauxite*** *(HK) Ltd* [2018] HKCU 702.
39. A party being "unable to present their case" is a ground to avoid enforcement of an arbitration award under Article V(1)(b) of the 1958 New York Convention.
40. For example, see Article 29 of the SIAC Rules 2016 and Article 43 of the 2018 HKIAC Rules.
41. Summary judgment is common in common law litigation proceedings. See, for example, Hong Kong Order 14 of the Rules of High Court (Cap. 4A).
42. A party being "unable to present their case" is a ground to avoid enforcement of an arbitration award under Article V(1)(b) of the 1958 New York Convention.
43. [2004] EWHC 2001 (Comm).
44. [2005] EWHC 1412 (Ch).
45. [2001] HKLRD (Yrbk) 21.
46. [2023] HKCFI 132.
47. It is worth noting that asymmetric **jurisdiction** clauses may cause difficulty to enforce Hong Kong judgments in Mainland China. This is because the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597) requires that a "choice of Hong Kong court agreement" must specify "*courts in Hong Kong… to determine a dispute which has arisen… in connection with the specified contract to the exclusion of courts of other jurisdictions*". In ***Industrial and Commercial Bank of China (Asia) Limited v Wisdom Top International Limited***, the Hong Kong High Court held that the wording used in a financing document, which obliged the borrower to use the Hong Kong courts in the event of any dispute whilst the lender was not so constrained, did not amount to an exclusive jurisdiction clause within the meaning of the Mainland Judgments (Reciprocal Enforcement) Ordinance (Cap. 597).
48. [2017] SGCA 32.
49. See https://arbitrationblog.kluwerarbitration.com/2020/02/25/unilateral-option-clauses-to-arbitration-the-debate-continues/

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Ranked as a Leading Lawyer in five practice areas (Banking & Finance | Structured Finance | Securitisation | Derivatives | Restructuring & Insolvency) across three jurisdictions by Legal Directories, he is the only lawyer in Asia to be recognised in all of these categories and jurisdictions. He has been described as follows: "a master of his craft" (*The Legal 500*, 2024); "a subject matter expert" (*Chambers*, 2023); "honest approach… brilliant strategic mind" (*Chambers*, 2022); "very well known in the Asia Pacific market for his securitisation expertise" (*The Legal 500*, 2018); "Stands out for his expertise in derivatives and structured finance" (*Chambers*, 2016); and "revered for his ability to advise on complex financial structures" (*Chambers*, 2017).

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