Competing Arbitration Clauses in Share Redemption Disputes: Contractual Construction and the Unity of Dispute Resolution

Author: Edward LIU

Introduction

Despite evolving economic and geopolitical conditions, Hong Kong remains a leading arbitration venue, particularly for disputes stemming from cross-border investment arrangements and the intricate contractual frameworks that often accompany IPO preparations. A recent decision by the Hong Kong Court of First Instance in XX, YY & Ors v ZZ HCCT 136/2024 ([2025] HKCFI 3089) provides critical guidance on a recurring issue in complex investment structures: how Hong Kong courts should approach disputes involving overlapping arbitration clauses in multiple contracts. This judgment not only clarifies the legal principles governing jurisdictional challenges but also reinforces the primacy of contractual construction in resolving such disputes.

This article examines the Hong Kong court's reasoning and its broader implications for investment disputes involving share redemptions, particularly in private equity and venture capital contexts. It argues that the Hong Kong court's emphasis on purposive interpretation and the avoidance of fragmented proceedings enhances legal certainty and aligns with commercial common sense.

Background: Multi-Contract Investment Structures and the Dispute

The case arose from a sophisticated investment arrangement involving two Share Purchase Agreements (SPAs), concluded in 2017 and 2021 respectively. The 2017 SPA facilitated the Defendant's initial acquisition of preferred shares in a Cayman Islands holding company. That agreement was executed by ten Plaintiffs, including various Mainland subsidiaries, all of whom provided joint and several warranties and indemnities. Importantly, the 2017 SPA included a broad arbitration clause referring disputes to the Hong Kong International Arbitration Centre (HKIAC).

In 2021, following the failure of a planned IPO, the parties entered into a second SPA to allow the Defendant to exit via a structured share buy-back. This later agreement involved only a subset of the original parties, primarily the holding company and its controlling shareholder, and featured a narrower HKIAC arbitration clause with a different procedural mechanism.

A dispute arose when the Plaintiffs failed to complete the second tranche of the repurchase under the 2021 SPA. The Defendant brought arbitration proceedings under the 2017 SPA, alleging breaches of the warranties and indemnities, including those incorporated in the updated 2021 constitutional documents. The Plaintiffs challenged the arbitral tribunal's jurisdiction, arguing that the gravamen of the dispute concerned the 2021 SPA and should therefore be governed by its arbitration clause.

The Court's Analysis: A Primacy of Purposeful Construction

Mrs. Justice Mimmie Chan rejected the jurisdictional challenge, finding that the arbitration clause in the 2017 SPA governed the dispute. The judgment underscores a foundational principle in arbitration law: jurisdictional issues under Article 16(3) of the UNCITRAL Model Law are determined de novo by the courts. This allows the judiciary to independently assess whether a tribunal has jurisdiction, rather than merely reviewing the tribunal's conclusions.

Central to the judge's reasoning was the breadth and language of the arbitration clause in the 2017 SPA. It extended to disputes "arising out of or relating to" the agreement and its associated documents, i.e. a wide formulation that has been repeatedly upheld as encompassing a broad spectrum of claims. Given that the Defendant's claims were framed as breaches of warranties and indemnities under the 2017 SPA, the judge found it appropriate to uphold jurisdiction under that agreement's clause.

In contrast, the 2021 SPA's arbitration clause was narrower and limited to the parties to that agreement. The Mainland subsidiaries, i.e. key Warrantors in the 2017 SPA, were not parties to the 2021 SPA and thus could not be bound by its dispute resolution clause. The judge found no evidence that the later SPA was intended to supersede or extinguish the earlier agreement's arbitration framework.

Rejecting the "Centre of Gravity" Test

The Plaintiffs urged the judge to apply the "centre of gravity" test, arguing that the factual core of the dispute lay in the 2021 SPA's repurchase provisions. However, the judge declined to adopt this approach rigidly. While the "centre of gravity" analysis may assist in determining which of multiple agreements governs a dispute, it cannot override the express language of the arbitration clauses or the parties' intentions as reflected in those clauses.

The judge cautioned against allowing factual overlap to obscure the legal source of the claims. Although the dispute was factually connected to the 2021 SPA's put option mechanism, the legal basis of the claims remained rooted in the warranties and indemnities under the 2017 SPA.

Avoiding Fragmentation: Commercial Efficiency and Legal Coherence

A particularly salient feature of the decision is its recognition of the practical consequences of fragmented proceedings. The judge noted that requiring disputes to be bifurcated between two different arbitral tribunals would be inefficient, costly, and risk inconsistent outcomes. Such fragmentation would also undermine the parties' likely intention, which was evident from the inclusive drafting of the 2017 SPA, to resolve disputes involving all Warrantors in a single forum.

This pragmatic approach aligns with a broader jurisprudential trend favouring the consolidation of disputes where appropriate, particularly in commercial contexts involving interrelated agreements. By prioritising the efficiency and coherence of the dispute resolution process, the judge reinforced the role of arbitration as a commercially sensible alternative to litigation.

Implications for Drafting and Dispute Resolution Strategy

The decision offers valuable guidance for legal practitioners and commercial parties involved in drafting multi-contract investment arrangements. Several key lessons emerge:

1. **Clarity in Arbitration Clauses:** Parties should ensure that arbitration clauses in successive

agreements clearly state whether they are intended to supersede or coexist with those in earlier contracts.

2. **Inclusion of Relevant Entities:** Where group entities (e.g. subsidiaries) are to be bound by dispute resolution mechanisms, they should be expressly included as parties.

3. **Avoidance of Fragmentation:** Drafters should consider whether dispute resolution mechanisms across related agreements are consistent and conducive to unified proceedings, particularly in complex investment structures.

4. **Framing of Claims:** Parties seeking to invoke particular arbitration agreements should carefully frame their claims in accordance with the legal rights and obligations arising under the relevant contract.

Conclusion

The decision in XX, YY & Ors v ZZ stands as a leading authority on how Hong Kong courts should approach overlapping arbitration clauses in complex investment disputes. By reaffirming the centrality of contractual construction and resisting a rigid application of the "centre of gravity" test, the Hong Kong Court has strengthened the legal certainty and structural coherence of arbitration in Hong Kong. The judgment demonstrates a pragmatic, commercially informed approach, which respects the parties' intentions and promotes procedural efficiency.

For practitioners regularly advising on share redemption disputes, particularly those involving multi-tiered investment structures and evolving shareholder arrangements, the case offers clear and timely guidance. In the current climate where share redemption disputes are becoming increasingly prevalent, this judgment offers clear guidance on jurisdictional issues that often arise in practice, especially in multi-contract investment structures.

As a jurisdiction, Hong Kong continues to lead the region in providing a dependable, arbitration-friendly framework for resolving high-stakes financial disputes. This case reinforces the city's reputation not only as a neutral seat, but also as a mature forum capable of addressing the complexities of modern cross-border investments. For investors, companies, and counsel alike, it is a compelling reminder of the importance of thoughtful contract drafting and a coherent dispute resolution strategy from the outset.

Haiwen & Partners Hong Kong Dispute Resolution Team Profile

Haiwen & Partners Hong Kong Dispute Resolution Team specializes in providing comprehensive and highly effective dispute resolution services, covering international arbitration, cross-border civil and commercial litigation, corporate shareholder disputes, insolvency and restructuring, asset protection, and shipping and trade. The team is composed of seasoned lawyers qualified in Hong Kong, England and Wales, and Mainland of China. With deep expertise in international arbitration rules and multi-jurisdictional litigation procedures, the team is well-equipped to handle complex cross-border legal issues, delivering tailored, pragmatic, and innovative solutions for clients.

The team has extensive experience in resolving civil and commercial disputes, including contract disputes, shareholder rights protection, commercial fraud, debt recovery, and financial and securities-related matters. Whether dealing with high-value commercial disputes or technically demanding industry-specific cases, the team integrates a global perspective with local legal practice to provide precise legal advice and strategic support. They excel in handling cross-border litigation and arbitration cases, including asset tracing and freezing, enforcement of judgments and arbitral awards, and emergency relief applications, earning the trust of state-owned enterprises, multinational corporations, financial institutions, and high-net-worth individuals.

In the area of share redemption and investment exits, the team is adept at handling disputes involving the enforcement of redemption rights, founder buyback obligations, most-favored-nation clauses, and complex valuation mechanisms. By leveraging professional legal analysis and strategic negotiations, the team has successfully assisted clients in resolving investment protection and shareholder disputes within multi-agreement frameworks, safeguarding client interests and achieving commercial objectives.

With a deep understanding of international arbitration rules and Hong Kong litigation procedures, the team demonstrates exceptional performance in high-value cases involving asset freezing, valuation disputes, and enforcement actions. Whether addressing commercial disputes, family wealth management, or virtual asset-related issues, the team remains client-focused, delivering practical and effective solutions that have garnered industry recognition and client trust.

Haiwen Hong Kong Dispute Resolution Team is committed to providing outstanding legal services, helping clients navigate risks and maximize value in complex business environments.

2025-09-09