Foreign Law as a 'Question of Law' for Schedule 2 Appeals: Hong Kong Court Clarifies a Critical Issue for Maritime Arbitration

Author: Edward LIU Aaron Lai

The Misconception and Its Origins

In a judgment handed down on 19 September 2025, the Hong Kong Court of First Instance in CI v IU HCCT 34/2025; [2025] HKCFI 4397 addressed a critical jurisdictional issue concerning appeals on a question of law under sections 5 and 6 of Schedule 2 to the Arbitration Ordinance (Cap. 609). While the court ultimately dismissed the plaintiff's application for leave to appeal, the judgment decisively clarified an important misconception within the Hong Kong maritime arbitration community: that the choice of English law as the governing law prevents appeals under Schedule 2, as foreign law is considered a question of fact. This clarification significantly enhances Hong Kong's standing as a world-class maritime arbitration hub, aligning its approach with that of London.

Key Holdings on Foreign Law and "Question of Law"

The dispute arose from a chain of back-to-back charterparties concerning the carriage of phosphate rock from Egypt to South China. The tribunal had awarded damages to the defendant (the owners) for losses sustained not only by the defendant but also by an upstream company affiliated with the defendant, IS. The plaintiff (the charterers)

sought leave to appeal against the award on the ground that the tribunal had erred in ordering indemnification for IS's losses when IS had made no claim against the defendant.

The plaintiff's application raised two main issues: (1) whether the alleged error constituted a "question of law" under sections 5 and 6 of Schedule 2, given that English law governed the substantive dispute; and (2) whether the tribunal's decision on the indemnity issue was obviously wrong or at least open to serious doubt. While the court ultimately rejected the plaintiff's leave application on the merits of the indemnity issue, it provided critical guidance on the jurisdictional question, confirming that the governing law being foreign (English) law does not automatically preclude an appeal under Schedule 2. Whether the complaint amounts to a "question of law" depends on the nature of the issue and the lens of the Hong Kong court.

The plaintiff argued that the phrase "question of law" in sections 5 and 6 of Schedule 2 is not confined to questions of Hong Kong law. Unlike section 69 of the UK Arbitration Act 1996 (which is UK Arbitration Act 2025 now), which limits appeals to "questions of law of England and Wales", the AO contains no such restriction. This deliberate omission reflected the legislature's intention to adopt a more expansive approach consistent with Hong Kong's role as an international arbitration hub. The plaintiff relied on the Report of the Committee on Hong Kong Arbitration Law and the Consultation Paper on Reform of the Law of Arbitration in Hong Kong, which emphasised the importance of creating a flexible and competitive framework for international arbitration. To construe "question of law" as limited to Hong Kong law questions would frustrate this legislative intent and severely curtail the utility of Schedule 2, especially in maritime arbitration where English law is frequently chosen as governing law.

The plaintiff further submitted that foreign law is not always treated as a question of fact in arbitration. Where foreign law is closely analogous

to Hong Kong or English common law, tribunals and courts may apply it directly without requiring expert evidence. This approach, the plaintiff argued, is consistent with the decisions in Beard v Revenue and Customs Commissioners [2025] EWCA Civ 385 and Perry v Lopag Trust Reg No. 2 [2023] 1 WLR 3494. In Beard, the English Court of Appeal held that the application of foreign law could give rise to an error of law if the relevant legal system operates on principles similar to English law. Similarly, in Perry, the Privy Council recognized that a judge may rely on their legal skills to apply foreign law where it operates on analogous principles. The plaintiff emphasized that English law, particularly in the context of contracts and maritime disputes, remains highly similar to Hong Kong law. Consequently, the tribunal's application of English law should be treated as a legal exercise, amenable to appeal as a "question of law".

Deputy High Court Judge Jonathan Wong agreed with the plaintiff's submissions. He confirmed that the phrase "question of law" in sections 5 and 6 of Schedule 2 is not confined to Hong Kong law. Unlike the UK Arbitration Act 1996, the AO contains no provision restricting appeals to questions of domestic law. The absence of such a restriction, the court noted, was consistent with the legislative intent to enhance Hong Kong's attractiveness as an international arbitration hub. Restricting appeals to Hong Kong law would undermine the AO's purpose, particularly in maritime arbitration, where English law is frequently chosen as the governing law.

The court further recognised that foreign law is not always treated as a question of fact in the arbitration context. Where foreign law is analogous to Hong Kong or English law, tribunals and courts may apply it directly without expert evidence. This approach, the court noted, aligns with Beard, as well as the commentary in Arbitration in Hong Kong: A Practical Guide (5th Ed.), which acknowledges that Hong Kong tribunals frequently apply English law directly given its similarity to Hong Kong law. The court emphasised that whether an appeal falls

within the rubric of sections 5 and 6 of Schedule 2 depends on the nature of the complaint and the lens of the Hong Kong court. In this case, but for the court's conclusion on the substantive issue, the court would have held against the defendant's jurisdictional challenge.

Although the court agreed with the plaintiff's position on the jurisdictional question, it ultimately dismissed the leave application. The court emphasised that the threshold for leave to appeal under Schedule 2 is high, requiring an error to be "obviously wrong" or at least "open to serious doubt." While the court accepted that the tribunal's application of English law could constitute a "question of law," it found that the tribunal's findings in this case were neither obviously wrong nor open to serious doubt. The tribunal's reliance on principles of foreseeability and causation, as well as its reference to Occidental Chartering Inc v Progress Bulk Carriers Ltd [2012] EWHC 3515 (Comm), were consistent with established legal principles.

Strengthening Hong Kong's Position as a Maritime Arbitration Hub

The judgment in CI marks a significant step forward for Hong Kong as a leading maritime arbitration seat. By confirming that appeals under Schedule 2 may still be available even where foreign law governs the dispute, the court has removed a long-standing practical impediment. Previously, some parties mistakenly believed that choosing a foreign governing law would deprive them of the right to appeal, leading to hesitation in selecting Hong Kong as the seat of arbitration. This decision not only eliminates that practical barrier but also corrects the misconception that a foreign governing law excludes the right to appeal. This clarification enhances Hong Kong's competitiveness as a global

arbitration hub, particularly in the maritime sector, where English law remains the predominant choice for governing contracts.

Under paragraph 23 of the HKMAG Terms, parties are entitled to challenge an arbitral award on grounds of serious irregularity and appeal against an award on a question of law, effectively opting into the provisions of sections 4, 5, 6, and 7 of Schedule 2 of the Arbitration Ordinance. However, it is important to note that if the arbitration clause only provides for ad hoc arbitration without adopting the HKMAG Terms, the right to appeal on errors of law is not activated, leaving no scope for such appeals. This distinction underscores the importance of carefully drafting arbitration clauses to preserve such right of appeal.

It is also worth noting that Hong Kong's arbitration legislation is set to undergo review, as announced by the Chief Executive of the HKSAR in the annual Policy Address on 17 September 2025. One key issue likely to be examined is the right to appeal on points of law, especially given that the UK Arbitration Act retains this right on an opt-out basis. Meanwhile, Singapore is reviewing its International Arbitration Act, with one of the focal points being whether to introduce an appeal mechanism for legal errors.

At the same time, the judgment reinforces the pro-arbitration stance of the Hong Kong courts. The court's refusal to grant leave illustrates the high threshold for leave to appeal under Schedule 2. The courts remain reluctant to interfere with arbitral awards unless there is a clear and compelling error of law. This careful balance between judicial oversight and deference to arbitration reinforces Hong Kong's reputation as a jurisdiction that prioritizes the autonomy and finality of arbitration while safeguarding against serious legal errors.

As the maritime industry continues to navigate increasingly complex legal issues, this decision reaffirms Hong Kong's commitment to delivering high-quality, internationally competitive arbitration services.

It not only strengthens Hong Kong's position in the maritime arbitration landscape but also provides clarity and confidence to parties across industries where English law is frequently chosen. In sum, while the plaintiff's appeal ultimately failed, the court's clarification of the foreign law issue represents a significant victory for Hong Kong maritime arbitration, solidifying its status as a leading arbitration center on the global stage.

About the Authors

Cherry Xu, Barrister-at-Law at Des Voeux Chambers, acted as counsel for the plaintiff, alongside Edward Liu, Partner, and Aaron Lai, Associate, of Haiwen & Partners LLP. Despite the dismissal of the leave application, their arguments played a pivotal role in advancing critical clarifications on the interpretation of "questions of law" under Hong Kong's Arbitration Ordinance, particularly in the treatment of disputes governed by foreign law.

文章作者

刘 洋 (Edward Liu)

合伙人

edwardliu@haiwen-law.com

扫描二维码
查阅律师简历

黎淇瀚 (Aaron Lai)

律师

aaronlai@haiwen-law.com

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