

The Hong Kong Court Re Defines the Limits of Re Arbitration and Enforcement Warfare

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Finality, Fraud, and the Frontiers of Supervisory Jurisdiction: The HongKongCourt Re-Defines the Limits of Re-Arbitration and Enforcement Warfare

Introduction

The recent 77 page judgment of Minnie Chan J in *Global Mining Development L.P. v China National Gold Group (Hong Kong) Ltd* ([2026] HKCFI 902) marks a doctrinal moment for Hong Kong arbitration law. Delivered after five years of relentless enforcement and satellite proceedings across Hong Kong, the British Virgin Islands and beyond, the decision does more than resolve one of the region's most hard fought commercial sagas. It articulates a coherent vision of judicial supervision, comity and finality, a framework that integrates Hong Kong's supervisory role with principles developed by the English courts and echoed by their offshore counterparts.

Read alongside the parallel BIV and Hong Kong decisions of 2025, the judgment closes a jurisprudential circle: it defines when arbitral finality will trump fresh allegations of fraud and how Hong Kong's supervisory court will guard its exclusive jurisdiction from collateral challenge.

The Context: "An Enforcement War"

Chan J's decision situates itself in what she aptly described as an "enforcement war". After four partial HKIAC awards (2023-24) enforcing performance and damages obligations exceeding US\$2 billion, China National Gold Group (Hong Kong) Limited (CNG) launched a global campaign to resist execution, initiating BVI proceedings, new Hong Kong applications, and multiple arbitrations on similar facts. The court's response, refusing stays, granting injunctions to restrain the so-called Bribery Arbitration, and condemning abuse of process, is best understood as part of an emerging cross-border enforcement jurisprudence uniting Hong Kong and comparable common law courts.

Integration Across the Jurisdictions: A Coherent Judicial Dialogue

From *Nomihold Securities Inc v Mobile Telesystems Finance SA* [2012] 1 Lloyd's Rep 442, C v D [2007] EWCA Civ 1282, *Noble Assurance Co v Gerling-Konzern General Insurance Co* [2007] EWHC 253 (Comm) to Hong Kong's own *Xiamen Xinjingdi Group Ltd v Eton Properties Ltd* [2023] HKCFI 1327, courts at the seat of arbitration have consistently held that parties who choose a seat accept exclusive recourse to that court for any challenge to an award. Chan J combined these authorities to reaffirm a single principle: any attempt to re-arbitrate or to pursue collateral proceedings attacking an award is a direct affront to the supervisory court's exclusive jurisdiction.

By treating the Hong Kong courts as the functional equivalent of the English Commercial Court under sections 67 to 70 of the Arbitration Act 1996, the judgment firmly situates Hong Kong within the international mainstream of Model Law jurisdictions.

The judgment harmonises with contemporaneous enforcement rulings in the offshore courts, notably *Global Mining Development L.P. v China National Gold Group Ltd* (ECSC BVI Commercial Court, Wallbank J, 2025) and *Global Mining Development L.P. v China National Gold Group (Hong Kong) Ltd* (ECSC Court of Appeal, 2025). Those tribunals had condemned CNG's tactics as "scandalous and deliberate conduct designed to abuse the process". Chan J reasoned that Hong Kong's supervisory court must protect both its own judgments and those of cooperating foreign courts. This transforms comity from passive mutual respect into active procedural alignment.

Rather than creating forum friction, the three sets of decisions demonstrate a single, integrated enforcement narrative. The Eastern Caribbean Supreme Court asserted practical jurisdiction to assist in enforcement. The BVI High Court imposed contempt sanctions for breach of repatriation orders. The Hong Kong Court fortified the doctrinal foundations that ensure those foreign measures rest on solid and immovable legal ground.

Substantive Integration: Finality and Fraud under Article 34

At the heart of Chan J's judgment lies a rigorous construction of Article 34 of the UNCITRAL Model Law and section 81 of Hong Kong's Arbitration Ordinance. The judge adopted a purposive but disciplined approach. First, Article 34 provides the sole and exclusive channel of recourse to a court against an award. Second, that channel closes three months from the date the award is received. Third, fraud, even if discovered later, does not reopen that gate.

The judge expressly rejected what counsel described as the "Thieves' Charter" argument, namely the idea that newly discovered fraud must always justify reopening proceedings. Instead, the Hong Kong approach now aligns with the decision held by Singapore's Court of Appeal in *Bloomberry Resorts and Hotels Inc v Global Gaming Philippines LLC* [2021] 1 SLR 1045. That court held that the three-month period under Article 34(3) of the Model Law is a strict and jurisdictional time bar, not a mere procedural rule that can be relaxed for equity or fairness. Chan J adopted the same view. Her insistence on finality reinforces investor confidence that Hong Kong awards are conclusive and not open to indefinite collateral challenge.

CNG's so-called "Bribery Arbitration" attempted to reframe allegations of fraud as claims for rescission and damages, arguing that these were new causes of action distinct from the issues already determined in the HKIAC awards. Chan J saw through that distinction. Once an arbitral tribunal has decided the contractual questions under the relevant share purchase or shareholders' agreements, there is no jurisdiction for a second tribunal to undo the outcome under the guise of restitution or rescission.

The judge reasoning mirrors the analytical framework set out by English Commercial Courts' decision in *Sodzawiczny v Smith* [2024] 1 Lloyd's Rep 466, which distinguishes between genuine new disputes and non-compliant challenges dressed in new forms. Hong Kong's adoption of that taxonomy places its jurisprudence in full alignment with English law and strengthens doctrinal harmony across major Model Law jurisdictions.

Abuse of Process and the Expanded Role of Anti-Arbitration Injunctions

Chan J's reliance on section 21L of the High Court Ordinance (Cap. 4) to grant an injunction restraining the continuation of the so-called Bribery Arbitration reinforces that anti-arbitration injunctions are not procedural anomalies but essential tools for protecting the supervisory authority of the seat court.

Drawing directly on *Xiamen Xinjingdi v Eton, SA v KB* [2016] EWHC 2363 (Comm), and the UK Privy Council's judgment in *Convoy Collateral Ltd v Broad Idea International Ltd* [2021] UKPC 24, Chan J held that an anti-arbitration injunction is justified where continuation of the arbitration would be oppressive, vexatious, unconscionable, or an abuse of process.

This functional extension from anti-suit to anti-arbitration relief brings Hong Kong into line with the English "Category 1" injunctions recognised on contractual grounds, while adding an Asian nuance. Chan J placed greater emphasis on public policy, comity, and procedural economy than on contractual promise alone. The resulting position is pragmatic and balanced: arbitration agreements cannot be turned into instruments for procedural warfare, and the court will act to preserve the integrity and efficiency of its supervision over the arbitral process.

From "Fraud Alleged" to "Fraud Proved": The Evidential Threshold

Alongside its doctrinal holdings, the judgment also delivers a clear message on evidential standards. Chan J grounded her reasoning in *Mayer Corp v Alliance Financial Intelligence Ltd* [2019] HKCA 777 and *Lu Yongliang v Bank of China Ltd* [2020] HKCA 1089, and she placed those authorities alongside the English Supreme Court's guidance in *Takhar v Gracefield Developments Ltd* [2020] AC 450. Together, they define a strict standard for reopening a concluded award on grounds of fraud.

In practical commercial terms, fraud will not defeat arbitral finality unless three conditions are satisfied. First, the dishonesty must be conscious and deliberate. Second, it must be material to the reasoning that produced the award. Third, the claimant must show that the alleged fraud could not, with reasonable diligence, have been discovered earlier.

Applied to the facts, CNG's silence for fourteen months after receiving a whistleblower's report in 2024, coupled with its continued participation in parallel arbitrations and inconsistent procedural positions, fatally undermined its credibility. Chan J held that such delay and inconsistency will defeat even superficially plausible claims of fraud. The decision establishes that diligence and candour are now embedded features of Hong Kong's arbitration ethics.

Synthesis with Earlier Hong Kong CFI Cases

When read alongside the Hong Kong Court of First Instance's 2025 decisions in *Gao Zhenfeng v Keen Summit Capital Ltd and Others* [2025] HKCFI 4768 concerning anti-suit relief, *X v Y* [2025] HKCFI 6417 on worldwide freezing orders and disclosure, and *Re Application by China Construction Bank (Asia) Corporation Ltd* [2025] HKCFI 4682 for registration of Mainland judgment, Chan J's decision in the present case functions as the capstone authority uniting three complementary strands of judicial policy.

The first strand is supervisory exclusivity. Building on *Gao Zhenfeng* case, the court reaffirmed that only the Hong Kong court, as the court of the seat, may set aside awards rendered in Hong Kong. Fresh arbitrations or collateral proceedings challenging those awards are barred, reinforcing the exclusivity principle drawn from Article 34 of the UNCITRAL Model Law.

The second strand is cross-border enforcement synergy. *Re CCB Asia* case demonstrated the growing integration between Hong Kong and Chinese Mainland under the Mainland Judgments in Civil and Commercial Matters (Reciprocal Enforcement) Ordinance (Cap. 645). Chan J's judgment in *Global Mining v CGN* mirrors that cooperative approach but extends it further: it aligns Hong Kong's supervisory control with enforcement measures taken in the BVI and Eastern Caribbean Supreme Court. In doing so, it creates an integrated enforcement architecture grounded in mutual respect and coordination among common law and Mainland jurisdictions.

The third strand is candour and accountability, reflected in *X v Y*, which addressed the duty of full and frank disclosure when seeking *Mareva* injunctions and worldwide freezing orders. Chan J applied the same principles in *Global Mining v CGN*, condemning procedural inconsistency and lack of transparency as forms of abuse of process. She converted disclosure duty into a wider principle of arbitral integrity: parties must approach the seat court with absolute candour if they expect its assistance.

Taken together, these authorities establish an integrated judicial ecosystem built on finality, transparency, and coordination. The Hong Kong court has now consolidated its position as both guardian of arbitral finality and cornerstone of a cooperative cross-border enforcement regime.

Policy and Practical Implications, Comparative Resonance, and Conclusion

The policy consequences of *Global Mining v CGN* extend well beyond the parties. The decision consolidates Hong Kong's doctrine of arbitral finality, its supervisory exclusivity, and its alignment with international and offshore jurisprudence.

For arbitrators and administering institutions such as HKIAC, the court's approach strengthens confidence that awards seated in Hong Kong will not be eroded by iterative re-arbitrations or collateral claims disguised as new disputes. The judgment affirms a bright line respect for awards, an essential element of Hong Kong's competitiveness under the New York Convention. Tribunals can proceed knowing that the seat court will defend the integrity of the process they oversee.

For practitioners, the integrated rulings create a clear set of strategic duties. Speed and diligence now define the window for challenge: any application to set aside an award must be filed within three months of receipt, even where fraud is alleged, since delay operates as a functional estoppel. Substance must prevail over form, meaning that attempts to repackage a challenge as one for rescission, damages, or restitution will still amount to an attack on the award itself. Transparency is equally crucial. Parties who discover post-award evidence suggesting criminal conduct are expected to disclose it promptly to both the tribunal and the supervisory court, as withholding information or relying on undisclosed external investigations undermines procedural integrity and credibility. Finally, coordination across jurisdictions has become an ethical as well as tactical imperative. Inconsistent conduct between Hong Kong, the BVI, or other enforcement courts can now be treated as procedural abuse, and effective advocacy demands a coherent, unified cross-border enforcement strategy.

For commercial parties, whether state-owned enterprises, financial institutions, or private investors, the decision reanchors legal certainty in arbitral outcomes. It communicates unequivocally that Hong Kong's supervisory jurisdiction is impregnable. Attempts to detour through shadow arbitrations or collateral litigation will attract injunctions and sanctions. In a financial climate prioritising predictability over gamesmanship, this doctrine crystallises a new rule of enforceability: the award must stand, and the seat will defend it.

Doctrinally, *Global Mining v CGN* brings Hong Kong into direct alignment with England and Singapore. In England, the Court of Appeal's reasoning in *Minister of Finance v IPIC* [2019] EWCA Civ 2080 grounds supervisory exclusivity in public interest rather than private right under sections 67 and 68 of the Arbitration Act 1996. Singapore's Court of Appeal in *Bloomberry Resorts and Hotels Inc v Global Gaming Philippines LLC* took an equally strict approach to Article 34 time limits, later echoed by Hong Kong in *AW v PY* [2022] HKCFI 1397. Meanwhile, the BVI and Eastern Caribbean Supreme Court decisions of 2025 elevate procedural comity from simple cooperation to active coordination and mutual enforcement support. The practical outcome is a coherent common law enforcement order extending from London to Hong Kong through the Caribbean, marking the first time such alignment has been judicially explicit and institutionally reinforced.

Chan J's persistent appeal to public policy transforms finality from a matter of private convenience into one of public mandate. Echoing Sir Geoffrey Vos C's dictum in *IPIC* case, she located the supervisory jurisdiction of the Hong Kong courts in the public interest in enforcing valid arbitral awards. This reframing detaches finality from contractual autonomy and roots it in systemic integrity, the rule of law's requirement that adjudication must end somewhere. Fraud, unless expressly provided for by statute or the Model Law, cannot justify reopening settled awards. In doing so, the judgment resists the rising trend of opportunistic fraud allegations used as tactical devices to delay or frustrate enforcement.

Read together, the 2025 to 2026 line of decisions forms a unified doctrine. Hong Kong now stands as the central node in a transnational judicial chain that consolidates supervisory exclusivity under Article 34 of the Model Law and section 81 of the Arbitration Ordinance, disciplines procedural abuse through strategic use of anti-arbitration injunctions, enhances cross-border comity by aligning enforcement principles with other common law and Mainland jurisdictions, and elevates finality to a question of public interest rather than mere party choice. Through this jurisprudence, Hong Kong reasserts its identity as a global arbitration seat defined by coherence, integrity, and judicial courage. The message to the international business community is unmistakable: the seat of arbitration remains the heart of judicial accountability, and Hong Kong will guard that heart firmly against the turbulence of transnational enforcement wars.