On 1 July 2019, the High Court of Singapore issued a ruling in the case of BNA v. BNB affirming the jurisdiction of a Singapore-seated tribunal by finding that the arbitration clause providing for submission of the dispute “to the Singapore International Arbitration Centre (SIAC) for arbitration in Shanghai” was an agreement to Singapore-seated arbitration with hearings in Shanghai.

The dispute in this case arose from a “Takeout Agreement” and its addendum between the plaintiff and two defendants, which stipulated Chinese law as the governing law. The defendants initiated the underlying arbitration at SIAC in 2016, establishing a three-member tribunal. Relying on the reference to Shanghai in the arbitration clause, the plaintiff challenged the tribunal’s jurisdiction, arguing that the arbitration agreement is governed by PRC law and therefore invalid because, under PRC law, a foreign arbitral institution may not administer domestic arbitration.

The majority of the tribunal held that the tribunal has jurisdiction because (i) the arbitration is seated in Singapore, (ii) the arbitration clause is therefore governed by Singapore law, and (iii) PRC law is irrelevant on the question of jurisdiction. One arbitrator, Theresa Cheng, dissented. She held that the tribunal does not have jurisdiction because (i) the governing law of the arbitration clause is PRC law, (ii) the parties’ dispute is domestic, and (iii) PRC law prohibits parties from submitting domestic disputes to foreign arbitral institutions.

The plaintiff initiated an action in the High Court under the section 10(3) of Singapore’s International Arbitration Act (“IAA”) seeking a declaration that the tribunal lacked jurisdiction. In its ruling, the High Court adopted the “three-stage approach” established in the English Court of Appeal case of Sulamérica, which asks the following:

i. Have the parties expressly chosen the proper law of their arbitration agreement?
ii. If not, have the parties impliedly chosen the proper law of their arbitration agreement?
iii. If the parties have made no express or implied choice, with what system of law does their arbitration agreement have its closest and most real connection?

Applying the Sulamérica approach, the High Court held that:
i. The parties have not expressly chosen the proper law of their arbitration clause. The parties’ choice of PRC law to govern their substantive contract does not amount to an express choice of PRC law as the governing law of the arbitration clause.

ii. Singaporean law is the parties’ implied choice of law, given the express reference to the SIAC Arbitration Rules. According to the high court, “Article 18.1 of the SIAC Rules provides expressly that, in the absence of a contrary agreement by the parties or a contrary determination by the tribunal, the seat of any arbitration under the SIAC Rules is to be Singapore.” Therefore, as a result of selecting the SIAC Rules, the parties “have expressly agreed” that Singapore is the seat of any future arbitrations and that “arbitration in Shanghai” refers to the venue for hearings being Shanghai.

iii. The parties’ arbitration agreement has its closest and most real connection with Singapore because, according to the High Court, Singapore is the seat of the arbitration chosen by the parties. The High Court held that, in light of the above, the Singapore-seated tribunal has jurisdiction to adjudicate the parties’ dispute.

This case highlights the importance of express and unambiguous agreement by the parties on both the seat of the arbitration and the governing law of the arbitration clause. As reflected in **BNA v. BNB**, an arbitration clause providing “arbitration in” a certain place might be interpreted as the venue when it was intended as the seat of arbitration, or vice versa. It would be prudent, therefore, to use the words “the seat of the arbitration is...” as well as “the governing law of the arbitration clause is...” to avoid uncertainty, wasted time, and unnecessary costs—all before even reaching the merits of the dispute.

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