



The BVI Commercial Court Confirms its Pro-Enforcement Approach to Arbitration Awards

Authors:

Richard Evans, Partner
Alecia Johns, Associate

Following the passing of the *2013 Arbitration Act* and the subsequent establishment of the International Arbitration Centre, the BVI is committed to both the conduct of arbitrations in the jurisdiction and no less the enforcement of foreign arbitral awards in as user-friendly a manner as possible.

This week the BVI Commercial Court strongly underlined that approach to the enforcement of awards. In *Coty Hong Kong Distribution Limited -v- Peakstar Development Ltd*, Adderley J held that the Applicant's inability to supply a certified copy of the arbitration agreement was no bar to enforcement of the award. The Applicant had complied with all other requirements and shown that none of the exceptions to enforcement under the New York Convention applied (notwithstanding the fact that the Court accepted that the burden for this lay on the Respondent). The Applicant's evidence demonstrated that the original arbitration agreement could no longer be located due to the passage of time. However, a senior member of the Applicant's staff had retrieved an electronic copy and affirmed that it was the only version the parties had ever dealt under and was the version submitted to the arbitral tribunal.

An additional issue was that the Respondent, although served with the proceedings, had not participated in the arbitration (which was conducted under the ICC Rules) nor did it appear on the hearing of the application to enforce the award. Adderley J was satisfied that all service requirements (both in the arbitration and the subsequent BVI enforcement proceedings) had been satisfied.

Whilst noting the requirement under the *Arbitration Act* to provide a certified copy of the arbitration agreement, the Commercial Court accepted, on the basis of academic commentary relating to enforcement under the Convention and the approach of other jurisdictions, that it was appropriate to adopt a pragmatic and commercial approach to the requirement, not least in light of the quality of the secondary evidence as to the arbitration agreement. It also noted the pro-enforcement policy applied to the enforcement of New York Convention Awards as confirmed by the Privy Council in the BVI decision of *Cukurova Holding AS -v- Sonera Holding BV* [2014] UKPC 15. Accordingly, it acceded to the application to enforce the award.

Conyers advocates Richard Evans and Alecia Johns acted for the successful Applicant, a further example of its successful global arbitration enforcement practice, which has recently been enhanced by the addition of associate Jane Fedotova, an arbitration law specialist, to the BVI team.

AUTHORS:

RICHARD EVANS

PARTNER

richard.evans@conyersdill.com

+1 284 852 1115

ALECIA JOHNS

ASSOCIATE

alecia.johns@conyersdill.com

+1 284 852 1117

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For further information please contact: media@conyersdill.com