UNITED STATES: INTELLECTUAL PROPERTY

US Supreme Court limits attacks on arbitration awards

Joel Lutzker
Sheppard Mullin

Most international business contracts include arbitration clauses. In an important decision construing the United States *Federal Arbitration Act* (FAA), the United States Supreme Court has found that parties are not free to agree by contract to alter the grounds for attacking an arbitration award in court. Asian companies entering into agreements with US-based enterprises and which may seek to enforce arbitral awards in the US, should take care in avoiding reliance on arbitration clauses which may run foul of this new Supreme Court decision.

It is now clear that the United States *Federal Arbitration Act* precludes private parties from modifying the grounds for court review of an arbitration award. Arbitration awards will be given limited court review in the United States.

In *Hall Street Assocs LLC vs. Mattel Inc*, the US Supreme Court considered whether a provision in an arbitration agreement which authorized a court to "vacate, modify or correct any award: (i) where the arbitrator's findings of facts are not supported by substantial evidence, or (ii) where the arbitrator's conclusions of law are erroneous," was enforceable under the Federal Arbitration Act. The Supreme Court held that it was not. Sections 10 and 11 of the Act identify specific grounds to overturn or modify arbitration awards. Generally, the grounds specified are fraud, corruption, refusal to hear evidence, exceeding authority or material mistake.

Previous cases in the United States had been split as to whether the grounds described in sections 10 and 11 were "mere threshold provisions open to expansion by agreement" or were "exclusive" and not subject to change. Hall Street made two arguments in favor of the "mere threshold" line of authority. First, it argued that previous Supreme Court cases had recognized that "manifest disregard of the law" was a basis for overturning an arbitration award. *Hall Street* reasoned that, since manifest disregard is not an enumerated ground under sections 10 and 11, these sections must not be "exclusive." Second, it argued that "the agreement to review for legal error ought to prevail simply because arbitration is a creature of contract, and the FAA is "motivated, first and foremost, by a congressional desire to enforce agreements into which parties ha[ve] entered."

The US Supreme Court rejected both arguments and held that there was "vagueness" in its previous "manifest disregard" language and that "[m]aybe the term 'manifest disregard' ... merely referred to the §10 grounds collectively, rather than adding to them" or was "shorthand for §10(a)(3) or §10(a)(4), the subsections authorizing *vacatur* when the arbitrators were 'guilty of misconduct' or 'exceeded their powers.'"

Hall Street faired no better on its "creature of contract" argument. As stated by the Supreme Court: "to rest this case on the general policy of treating arbitration agreements as enforceable as such would be to bet the questions, which is whether the FAA has textual features at odds with enforcing a contract to expand judicial review following the arbitration." Reviewing the text of the Act, the Supreme Court found that the language "substantiat[ed] a national policy favouring arbitration with just the limited review needed to maintain arbitrations' essential virtue of resolving disputes straightaway. Any other reading opens the door to the full-bore legal and evidentiary appeals that can 'rende[r] informal arbitration merely a prelude to a more cumbersome and time-consuming judicial review process.'"

It is now clear that the United States Federal Arbitration Act precludes private parties from modifying the grounds for court review of an arbitration award. Arbitration awards will be given limited court review in the United States. Asian companies doing business in the United States or with US-based business partners should be aware of and guided by this feature of United States federal law.

SHEPPARD MULLIN
SHEPPARD MULLIN RICHTER & HAMPTON LLP
ATTORNEYS AT LAW
30 Rockefeller Plaza, 24th Floor
New York, NY 10112, USA
Tel: 212-332-5025
Fax: 212-332-1233
Email: JLutzker@sheppardmullin.com
Website: www.sheppardmullin.com