

Complex Arbitrations

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Factors that increase complexity

- First, multiplicity of fora:
 - same dispute between same/similar parties coming up before different tribunals and national courts
- Second, multiplicity of applicable laws:
 - same dispute has links with several jurisdictions
- Third, multiplicity of parties:
 - disputes involving several parties, some signatories and some non-signatories



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Excalibur v Texas Keystone and others [2011] EWHC 1624 (Comm)

- Collaboration agreement between Excalibur and Texas Keystone – it contained an ICC arbitration clause for New York
- Excalibur brings an action against Texas Keystone and other affiliated companies (non-signatories) before
 - English Courts
 - ICC tribunal in New York
 - And requests for worldwide freezing order
- Defendants request for an anti-arbitration injunction



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English courts granted the anti-arbitration injunction



- Anti-arbitration injunctions should be granted in “exceptional circumstances and with caution”
- “I am satisfied, in the exercise of my discretion, that the continuation of such proceedings by Excalibur [before the ICC tribunal in NY] would be unconscionable, oppressive, vexatious or otherwise an abuse of the due process of the court”



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Dallah v Government of Pakistan [2010] UKSC 46



- Tribunal relied, *inter alia*, on the following facts
 - The Government of Pakistan had signed the MoU
 - The Chair of the Trust was also a Minister of the GoP
 - GoP agreed to act as a guarantor of the Trust
- To conclude that
 - “Such elements constitute a comprehensive set of evidence that may be relied upon to conclude that the GoP is a true party to the Agreement”



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English Courts Refused to Enforce the Award



- Para 147 (Lord Collins)
 - “On the face of the Agreement the parties and the signatories were Dallah and the Trust.”
- Para 130 (Lord Collins)
 - “Throughout the transaction Dallah was advised by a leading law firm ... which was responsible for the drafts of both the MoU between Dallah and the Government, and the Agreement between Dallah and the Trust. It must go without saying that the firm well understood the difference between an agreement with a State entity, on the one hand, and the State itself, on the other.”



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The French twist...

- Paris Cour d'appel (17 Feb 2011) upheld the award
 - "[The Government] behaved as if the Contract was its own;[...] this involvement of [the Government], in the absence of evidence that the Trust took any actions, as well as [the Government's] behaviour during the pre-contractual negotiations, confirm that the creation of the Trust was purely formal and that [the Government] was in fact the true Pakistani party in the course of the economic transaction".



West Tankers v RAS Riunione Adriatica

- Collision of a vessel in Italy: West Tankers (owners of vessel) had an arbitration agreement with Erg (charterers) for London
- Erg commences
 - Arbitration proceedings against WT in London AND
 - Court proceedings in Italy against its Insurers (Allianz)
- Insurers eventually pay and then commence court proceedings in Italy against WT to recover the money
- West Tankers
 - Denies jurisdiction of Italian Courts on the basis of the arbitration agreement between WT and Erg.
 - And requests English Courts to issue an anti-suit injunction against the Insurers



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- English courts initially granted the anti-suit injunction, but House of Lords referred the issue to the ECJ
- In 2009, the ECJ held that anti-suit injunctions are not compatible with European legislation (C-185/07)
- Was this a Pyrrhic victory for Allianz?



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West Tankers: The final (?) act



- Parallel proceedings go ahead between a tribunal in London and Italian national courts
- In 2010, tribunal in London issues an award confirming that West Tankers was not liable against Erg or Allianz
- West Tankers immediately moves to merge the award into an English judgment – request is granted
- Allianz appeals against the merger of the award
- April 2011: the merger is confirmed by English courts



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Thank you for your attention

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