Benjamin Pilling QC and Daniel Khoo successfully resist s. 68 challenge to $22m arbitration award based on an insufficiency of reasons

On 12 July 2019 Mrs Justice Moulder handed down judgment in Pakistan and ors v Broadsheet LLC [2019] EWHC 1832 (Comm), a decision in relation to an application to set-aside or remit a $22 million London-seated arbitration award. The Court rejected the challenge to the award, which was based on the alleged insufficiency of reasons given by the arbitral tribunal. The judgment provides welcome confirmation that an alleged insufficiency of reasons cannot, as a matter of law, found a challenge under s.68 of the Arbitration Act 1996.

The underlying arbitration was between the State of Pakistan, the National Accountability Bureau ("NAB") and Broadsheet, an Isle of Man company. Pakistan had set up the NAB in order to combat corruption-related offences. Broadsheet was engaged by Pakistan and the NAB to trace, locate and recover State assets taken from Pakistan. As a part of that agreement Broadsheet was entitled to be paid 20% in relation to the assets recovered. Among the targets under the agreement were assets held by the former Prime Minister of Pakistan, Nawaz Sharif, and his family.

Broadsheet obtained a partial award on liability in its favour in 2016. In the quantum award the arbitral tribunal assessed the damages payable to Broadsheet. The largest head of loss awarded to Broadsheet related to Broadsheet's lost opportunity to be paid sums relating to the potential recoveries from Mr Sharif and his family (so-called, 'Sharif Family Other Assets').

Pakistan and NAB challenged the quantum award, arguing that the tribunal's assessment of the loss relating to the Sharif Family Other Assets contained insufficient of reasoning that amounted to a serious irregularity. The alleged insufficiency of reasoning was said by Pakistan/NAB to be a breach of s.68(2)(c) and/or (h) of the Act, as it was a failure to conduct the arbitration in accordance with the agreed procedure or a failure to comply with the form of the award (which Pakistan and NAB alleged involved giving sufficient reasons). Pakistan and NAB relied on the decision of Morgan J in Compton Beauchamp Estates Ltd v Spence [2013] EWHC 1101 (Ch) which stated that insufficient reasons could in principle amount to a serious irregularity under s.68 of the Act.

This was the first occasion on which Compton had been considered by the Commercial Court. Moulder J held that an insufficiency of reasons could not, as a matter of law, found a challenge under ss.68(2)(c) or (h). In doing so, the Court declined to follow Compton and instead affirmed a line of Commercial Court authority to the effect that a lack of reasons could not give rise to a challenge under s.68, but instead only lead to a direction under s. 70(4) of the Act. The Court also held that, in any event, the reasons given were adequate and there was no serious irregularity.

It might, at first sight, appear surprising that an arbitral tribunal that fails to give adequate or sufficient reasons for its decision is immune from challenge under s. 68 of the Act. However, the decision in Pakistan and ors v Broadsheet LLC affirms that, where the parties have chosen arbitration, they have also agreed to be bound by the decision of their chosen tribunal (and the limited supervisory role of the English Court) and cannot subsequently complain as to the content of the decision.

4 Pump Court, Temple, London, EC4Y 7AN
T: +44 (0)20 7842 5555 F: +44 (0)20 7583 2036
www.4pumpcourt.com

A copy of the judgment is available here.

Benjamin Pilling QC and Daniel Khoo acted for the successful Defendant (instructed by Crowell & Moring LLP).

4 Pump Court, Temple, London, EC4Y 7AN
T: +44 (0)20 7842 5555 F: +44 (0)20 7583 2036
www.4pumpcourt.com