

# KEY JUDGMENT ON ARBITRATION CLAUSES AFFECTING THOUSANDS OF COMMERCIAL CONTRACTS

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Deals and cases

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Herbert Smith Freehills has secured an important victory in Hong Kong proceedings with far-reaching consequences for arbitration disputes around the world.

Many commercial contracts contain “escalation clauses” requiring parties to take certain steps before formal arbitration begins – such as a requirement to “negotiate in good faith” before starting arbitration.

Previously, failure to comply with the escalation mechanism in a contract left the arbitrators’ decisions vulnerable to challenge in domestic courts.

In a new judgment, the Hong Kong High Court confirmed that this approach is wrong, and that questions around the escalation mechanism are for arbitrators to resolve, not local courts.

“As Hong Kong is a ‘model law’ jurisdiction, this judgment has real international significance,” said Herbert Smith Freehills partner Simon Chapman QC, who appeared as advocate in the Hong Kong proceedings.

“This case will be of relevance in the 118 jurisdictions which have legislation based on the Model Law, and follows a wider international trend. Those in contractual disputes can now have certainty that arbitration agreements will be upheld, even where there are questions around pre-conditions to arbitration.”

“It also provides welcome confirmation of the pro-arbitration stance of the Hong Kong courts, particularly in cases where, as the judge observed, ‘the parties’ commitment to arbitrate is not in doubt’.”

Herbert Smith Freehills acted for the successful Defendant.

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## KEY CONTACTS

If you have any questions, or would like to know how this might affect your business, phone, or email these key contacts.



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