

- The judge was not persuaded, based on the limited evidence, that the designated court in Shenzhen lacked jurisdiction.
- If the plaintiff obtained judgment in Mainland, it would be possible for him to enforce the judgment in Hong Kong under the common law.

Having found an EJC, the Court exercised its discretion to stay the action in Hong Kong.

Commentary

This decision serves as a reminder that Hong Kong courts will carefully scrutinise the factual matrix and adopt a contextual analysis when construing jurisdiction clauses in contracts drafted in Chinese, rather than applying a one-size-fits-all, rigid textual analysis, unless the language of the jurisdiction clauses is expressly imperative. It also demonstrates the courts' pragmatic approach to such clauses, noting that bare verbs often connote mandatory obligations under Chinese language as seen from the Chinese text of the Hong Kong Basic Law. Clauses that appear permissive or declaratory may also be construed as exclusive where the commercial and regulatory context strongly favours the designated Mainland forum.

The decision also illustrates the courts' willingness to presume, in the absence of expert evidence concluding otherwise, that Mainland law is the same as Hong Kong law in its approach to construe a contractual term, and to apply Hong Kong law in interpreting contracts governed by Mainland law and drafted in Chinese.

For cross-border commercial agreements drafted in Chinese, it is critical to adopt clear language, for example, to use imperative words in describing the parties' obligations for clauses in areas such as governing law and jurisdiction, to avoid the potentiality of "forum shopping" and jurisdictional dispute.

If you have any questions regarding the matters covered in this publication, please reach out to any of the lawyers listed below or your usual Davis Polk contact.

Martin Rogers

+852 2533 3307
martin.rogers@davispolk.com

Yuan Zheng

+852 2533 1007
yuan.zheng@davispolk.com

Vivien Li

+852 2533 1037
vivien.li@davispolk.com

Eleanor Tang

+852 2533 1066
eleanor.tang@davispolk.com

Katy Choi

+852 2533 1070
katy.choi@davispolk.com

Caroline Wang

+852 2533 1039
zhuxin.wang@davispolk.com

Lok Cheung

+852 2533 1029
lok.cheung@davispolk.com

Leanne Chu

+852 2533 3337
leanne.chu@davispolk.com

David Lau

+852 2533 1011
david.lau@davispolk.com

Tak Yip Low

+852 2533 3338
takyip.low@davispolk.com

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