Chinese Judicial Methodologies to Determine the Validity of Arbitration Agreements

"Arbitration in Hong Kong and English Law to Apply" as an Example

Song Lianbin & Sophia Juan Yang[*]

A. Introduction

As Financial Times says, "it is now difficult to consider African prospects without the mention of China, which in the past decade has increased trade with the continent 10-fold – from $ 10 billion to more than $ 100 billion and has overtaken the US and the Europe as the largest trading partner in some important economies".[1] Africa has particular needs for cost-effective and time-effective mechanisms for resolving trade disputes with Chinese parties. The most preferred choice is, not surprisingly, commercial arbitration.

However, people are particularly cautious if the arbitration is held in China. Chinese courts for certain reasons have a reputation for not enforcing arbitration agreements and awards. In a 2010 survey regarding choices of arbitral seats, China was rated as "poor" by a majority of the participants who were asked to "evaluate the seat that they have never used before, based on their perception of

* Professor in Law, Wuhan University, Wuhan, China. Dr. iur. (University of Basel, Switzerland), LL.M. (Wuhan), former Research Assistent for Global Sales Law Project.

1 *See* Financial Times Special Report on Africa-China Trade, available at <http://media.ft.com/cms/de832bb2-7500-11df-aed7-00144feabdc0.pdf>.

that seat".[2] The Chinese courts, however, have denied and have been emphasising the trend of pro-arbitration. Indeed, the historical debate over the legitimacy of arbitration has been concluded. Now, very significant differences of opinion on how the pro-arbitration policy may be implemented have emerged. One school of thought, represented by the judicial authorities, opts for control mechanisms, one of which is internal scrutiny. The other, which we believe to be better, believes in finding solutions only by legal means.

This article focuses on two contradictory rulings on the validity of the clause: "Arbitration in Hong Kong and the English law to apply". This article starts off with a brief introduction to the Chinese arbitration law on significant matters such as the validity of arbitration agreements and enforcement of arbitral awards. The focus then shifts to the review of the two decisions. The case comments lead to the discovery that, although the final decision stands in favour of arbitration, the clumsy reasoning undermines the confidence of the foreign arbitration community. Finally, the advice for proper methods of judging the validity of arbitration agreements will be made.

B. Background: Chinese Arbitration Law on Validity and Enforcement

The codified Chinese Arbitration Law ("CAL") was enacted in 1994. The CAL adopted a formulation based on the PRC Civil Procedural Law ("CPL"). This

2 *See* L. Mistelis, 'Arbitral Seats: Choices and Competition', available at <http://kluwerarbitrationblog.com/blog/2010/11/26/arbitral-seats-choices-and-competition/>. For the purpose of this conference, the article herewith gives a brief introduction to the development of Asian arbitration. Asia is as a whole arbitration friendly. Almost all are parties to the New York Convention (Bangladesh, Brunei Darussalam, Cambodia, China, Hong Kong, India, Indonesia, Japan, Laos, Malaysia, Nepal, Pakistan, Philippines, South Korea, Singapore, Sri Lanka, Thailand and Vietnam). 12 Asian legal systems have adopted their arbitration law based on the UNCITRAL Model Law on International Commercial Arbitration ('UNCITRAL Model Law'), including Bangladesh, Cambodia, Hong Kong, Macau, India, Japan, Korea, Malaysia, The Philippines, Singapore, Sri Lanka, Thailand. Asia is striving towards a popular seat of arbitration. Singapore and Hong Kong are the leading arbitration jurisdictions in the region. The Singapore International Arbitration Centre ('SIAC') administered 114 international cases in 2009 based on its own rules. There is a caseload increase of 200% from 2000. In 2009, the Hong Kong International Arbitration Centre ('HKIAC') handled 309 international arbitration cases of which 29 cases were administered by the HKIAC in accordance with its rules. Hong Kong's importance is furthered when the ICC Court of Arbitration opened in 2008 a branch of its Secretariat there. More arbitration institutions have involved in international arbitration in Asia. The number of international cases handled by the Korea Commercial Arbitration Board ('KCAB') and the Japan Commercial Arbitration Association ('JCAA') is, respectively, 78 and 17. Chinese institutions exceptionally report the number of foreign-related cases. For years, the China International Economic and Trade Arbitration Commission ('CIETAC') and China Maritime Arbitration Commission ('CMAC') were the only two institutions that could arbitrate foreign-related disputes. Recently, this jurisdiction has been extended to any competent local institution. Nevertheless, the number of 'international' cases submitted to the CIETAC remained the largest in the region – 560 in 2009 and a total of 4310 in the last 10 years. The Beijing Arbitration Commission ('BAC')'s international caseload has seen a dramatic increase. It handled a total of 325 foreign-related cases since 1995 and 72 in 2009. However, there seems to be no regional leader in Africa.

caused the CAL to differ fundamentally from the UNCITRAL Model Law on International Commercial Arbitration.[3] First and foremost, the Chinese law imposes strict controls over the validity of arbitration agreements. The agreement must designate an arbitration institution. A mistaken designation is sufficient to render an agreement void.[4] However, Chinese courts in practice adopt a relatively liberal position. The Supreme People's Court ("SPC") from time to time has formed the view that parts of the CAL are too general and vague, and for this reason the SPC has issued a number of judicial interpretations for the purpose of clarifying the CAL. In 2006, the SPC promulgated the Interpretation by the Supreme People's Court on Several Issues Concerning the Application of the Arbitration Law of the People's Republic of China ("Jud Int on CAL"). It follows that many drafting defects with regard to the designation of the arbitral institution become remediable and operative.[5] More details of the Chinese approaches to determining the validity of the arbitration agreement will be addressed later.

Moreover, the enforcement problems in China have become a globally debated issue. While Chinese officials claim that the principles of the New York Conventions have been complied with,[6] the foreign investors and reporters remain critical.[7] Under the Chinese law, the grounds for refusal of a foreign award are generally limited to procedural matters, including problems with respect to (1) the appointment of the arbitrators; (2) the tribunal's lack of jurisdiction; (3) the respondent not being a party to the arbitration agreement; (4) lack of a valid arbitration agreement; (5) lack of notice; (6) the arbitral tribunal's unauthorised decision; (7) breach of public interest; and (8) insufficient facts.[8] However, foreign

3 On the other hand, the CAL borrowed some key features of the UNCITRAL Model Law. For instance, the CAL adopted the doctrine of competence-competence.

4 Art. 18 CAL provides that where the parties fail to designate an arbitration institution or if the arbitration institution is uncertain due to the inaccuracies or ambiguities in its name, the parties should reach a supplementary agreement. Failing this, the arbitration agreement is void. These are unusual provisions and there are no such provisions in other modern legislations. Moreover, it infers that China does not allow ad hoc arbitration, although foreign ad hoc awards are generally enforceable.

5 Firstly, where the name of the arbitration institution is inaccurate but, nevertheless, a specific institution is ascertainable, it shall be deemed that an agreement on the arbitration institution has been reached (Art. 3); secondly, where the arbitration clause provides for two or more arbitration institutions, the parties are allowed to select one by means of a subsequent agreement. Failing the subsequent agreement, the arbitration clause is deemed void (Art. 5); thirdly, the arbitration clause is valid if it provides that the arbitration will be conducted in an institution in a certain place where there is only one arbitration institution (Art. 6). However, one must note that a mere reference to the arbitration rules of an institution is not deemed a valid designation of that arbitration institution (Art. 4).

6 *See* in general M. Moser, 'China and the Enforcement of Arbitral Awards (Part 2)', *JCI Arb.* 1995, p. 132; *see also* R. Peerenboom, 'Seek Truth from Facts; An Empirical Study of Enforcement of Arbitral Awards in the PRC', 49 *American Journal of Comparative Law* 2001 (cited as: '*Seek Truth from Facts*').

7 *See* J.W. Exiang's (Vice President of SPC) speech at the Conference on the 50th Anniversary of the New York Convention in Beijing (6 June 2008), available at <www.civillaw.com.cn/article/default.asp?id=39787>.

8 Art. 71 CAL, referring to Art. 258 PRC Civil Procedural Law.

reporters questioned whether the outcome might be influenced by other factors such as protectionism, the nationality of the applicants and corruption in the courts. The SPC responded by issuing a notice in 1995, demanding that no foreign-related arbitration agreements or awards can be nullified or refused for enforcement unless approved by the SPC. In turn, the SPC has been able to monitor efforts by parties and lower courts to prevent arbitration or enforcement. This solution is conceived as an internal control mechanism, rather than a legal approach from a methodological perspective. It has been noted that the SPC decision-making process lacks transparency. There have been complaints that the SPC relies on the unfair and inaccurate presentation of the cases by the lower level courts and that the parties are not allowed to submit further documents in support of their positions.[9] Theses concerns support the author's argument that a clear pro-arbitration policy must focus on the judgement methods and legal reasoning.

C. The Problem – "Arbitration in Hong Kong and English Law to Apply"

The analysis is based on a case study. A Hong Kong company and a mainland shipping agency entered into a charter contract ("Contract") for the purpose of delivery of 5,000 tons of steel from Shanghai to Iran. The Contract contained an arbitration clause: "Arbitration in Hong Kong and English Law to Apply". After disputes arose, a lawsuit against the mainland company was brought to the Shanghai Maritime Court ("SMC"). The respondent raised a jurisdictional objection, alleging that the disputes should be arbitrated in Hong Kong and more precisely, administered by the Hong Kong International Arbitration Centre ("HKIAC").

The SMC denied the objection, holding that the said arbitration agreement was void.[10] In its reasoning, the court referred to Art 16 of the SPC Jud Int on CAL: (1) the law governing the validity of the arbitration agreement is the one chosen by the parties; (2) where the parties failed to reach such agreement but they have agreed on the seat of the arbitration, the law of that place will apply; and (3) if neither of the above was agreed upon, or when the court finds the agreement on the arbitral seat ambiguous, then the issue is one for the *lex fori* to decide. The SMC thereafter concluded that due to the parties' failure to prove the English and Hong Kong laws, the court would apply the CAL. Finally, since there was no specific designation of an arbitration institution, the arbitration agreement must be rendered void.

9 *See* Peerenboom, *Seek Truth from Facts*, *supra* note 6, p. 37.

10 The SMC found its jurisdiction over this matter in accordance with Arts. 24 and 38 CPL. Art. 24 CPL provides that, concerning any contractual dispute, the court of the place where the respondent resides or where the contract is to be performed, has the jurisdiction. In our opinion, the SMC's jurisdiction also comes from Art. 26 CAL. It gives the court the priority when one party brings the suit to the court despite the existence of an arbitration agreement and the other party raises the jurisdictional defence on the ground of validity prior to the start of the first oral hearing of the substantive disputes.

On appeal to the Shanghai High People's Court ("HPC"), the appellant (as respondent at first instance) raised the following arguments: firstly, the SMC had wrongly applied the Chinese law merely because the parties did not prove the foreign laws. Secondly, even if the scrutiny relied on the Chinese law, the validity of the arbitration agreement should not be governed by Art 18 of the CAL.[11] The appeal was supported by an expert opinion of a Hong Kong lawyer. The respondent (original claimant), on the contrary, insisted that the arbitration agreement be void. It argued, *inter alia*, that the recommended arbitration clause under the HKIAC Administered Arbitration Rules ("HKIAC Rules") required a specific reference to the institution and the applicable law.

The Shanghai HPC overturned the SMC ruling, finding that the arbitration agreement was valid and binding under both English and Hong Kong laws. The HKIAC Rules and the recommended clause had no legal effect on this issue. The jurisdiction of the SMC was therefore denied.

This case attracted wide applause from the arbitration community for being a significant indication of the pro-arbitration tendency of Chinese courts.[12] However, it would be a mistake to consider that the initial controversy has come to an end. On the contrary, the two decisions, as our analysis will show, are associated with a low level of legal competence for reasoning and judgement. It is premature to infer that the Chinese judges have adopted a pre-arbitration stance based on this case.

I. A Review of the Judgement Methods

There is no significant difference between the decision-making process as to the validity of an arbitration agreement and that concerning any other type of contracts. This process, in our opinion, should be conducted in the following four steps: determining the jurisdiction – finding the facts – applying the law – making the decision. The methodologies thereof involve the following two acts. First, the utmost attention should be given to the parties' mutual intentions. They may have suggested a methodology themselves, for instance, in choosing two separate laws to govern the arbitration agreement and the underlying contract. However, they may have used clumsy terminology which the court needs to interpret in order to give effect to the parties' true intent. In other words, the first task for the court will be to implement the parties' instructions. Secondly, the court will determine whether the contentions made by the parties are supported by the applicable law. The applicable law is to be decided by the conflict of laws methods.

11 *See supra* note 4.

12 Available at <www.incelaw.com/whatwedo/shipping/article/Shipping-e-Brief-October-2009/Shanghai-Peoples-High-Court>.

D. The SMC's Decision

In the first trial, the parties did not dispute the existence of the arbitration agreement. However, the parties disagreed as to its validity. The claimant considered the arbitration agreement void and then brought an action before the SMC. On the contrary, the respondent insisted that there was a binding arbitration agreement and therefore, the dispute should be arbitrated in Hong Kong (at the HKIAC). The matters of both fact and law are considerably straightforward. In our analysis, the SMC simply needs to perform two tasks: firstly, to ascertain what the agreement means by intent, and secondly, to ascertain the validity of the agreement under the applicable law.

I. Meaning of the Agreement

The parties have agreed on "Arbitration in Hong Kong" and referred to the "English law". The confusion is found in the reference to the "English law". It is not clearly stated whether the English law applies to the arbitration agreement or the underlying contract. This is a typical situation where the court must invoke rules of interpretation. However, prior to this step, there appears to be an implied question of which law governs the contract interpretation. The 2007 PRC SPC Judicial Interpretation on Related Issues concerning the Application of Law in Hearing Foreign-Related Contractual Dispute Cases in Civil and Commercial Matters ("PRC SPC Jud Int on Application of Law") did not give an answer.[13] The Chinese scholars hold that, unless express agreement has been made, the interpretation is subject to the relevant rules under the applicable law of the underlying contract.[14] However, there is awkwardness with this solution in the present case because the applicable law of the contract is yet to be found. In our analysis, the likelihood is either the English[15] or Chinese[16] rules of contract construction. Nonetheless, there is no material difference between the two scenarios. Both laws require an objective assessment of the meaning of the agreement.[17] In determining the meaning of the language of a commercial contract, both systems generally favour a commercially sensible construction.[18]

In reality, there is rarely, if ever, a separate governing law clause associated with an arbitration agreement. In the old English practice, a similar clause was construed in the way that the English law was to govern both the arbitration agreement and the underlying contract.[19] During recent years, the English courts have,

13 In October 2010, the Standing Committee of the National People's Congress issued The Law of the People's Republic of China on the Law Applicable to Foreign-related Civil Relationships, which will enter into force on 1 April 2011. Nor did it explicitly rule on this matter.

14 *See* (China) D. Huanfan, 'Application of Law of Interpretation of International Contracts', 3 *Journal of Hangzhou University of Commerce* 2003, p. 23.

15 If the court holds that the English law is potentially applicable to the entire contract.

16 If the court holds that the Chinese law has the closest connection with the matter in question.

17 *See* (Hong Kong) P. Yang, 'Construction of Contract', *Law Press China* 2007, p. 11 *et seq.* (cited as: '*Construction of Contract*'); Art. 125 of PRC Contract Law.

18 *See* Yang, *Construction of Contract*, *supra* note 17, pp. 23-26; Art. 125 of PRC Contract Law.

19 *XL Indurance v. Owens Corning* [2000] 2 Lloyd's Rep 500 (Q.B.).

however, adopted a differentiated approach. In *C v. D*,[20] the English Court of Appeal decided that the choice of law was limited to the matters of substance and the arbitration agreement was governed by the law of the seat of the arbitration. Notably, this is also the development in the recent SPC practice. In *Fanyu Zhujiang Steel Tube Ltd Co v. Shenzhen Panapond International Forwarding Co Ltd*,[21] the arbitration agreement "Place of Arbitration: Beijing; Chinese Law to Apply" was understood by the SPC that no consensus existed on the law governing the validity of the arbitration clause.

Therefore, the agreement is essentially a hybrid of an arbitration agreement and a choice of the proper law. Despite an ambiguous and unfortunate wording, the agreement, in our opinion, has to be understood as a reference to the English law as the law governing the entire contract. Insomuch as the Chinese law, since its birth, has admitted the civil principle of freedom of contract, Chinese courts are bound, by way of contract interpretation, to give effect to the parties' choice of arbitration. Rather than the pro-arbitration stance being a compromise or generosity, it is an obligation of the courts and not subject to their discretion. Thus, there is good reason to believe that the parties meant to have such intent.

On the contrary, the SMC violated the standard legal reasoning. The decision did not address the issue of interpretation and not even quote the entire arbitration agreement. Nor did it answer the question of which law would govern the contract interpretation. The SMC appeared to first have had the English and Hong Kong laws apply, although there was no basis for this reasoning. It acted more arbitrarily and capriciously by finally applying the Chinese law merely because the parties failed to provide proof of the foreign laws.[22] After all, the error was made when the SMC failed to prove the foreign laws ex officio.[23]

II. Application of Law

The SMC ruled correctly that the determination of the applicable law would depend on the domestic conflict of law rules. SMC also rightly understood that Art 16 of the SPC Jud Int on CA should apply. Had the agreement been interpreted in the manner we suggest, the case would have proceeded to the second sce-

20 [2008] 1 Lloyd's Rep 239 (C.A.).

21 *See* 'Reply of SPC to Request for Instructions on the Validity of the Arbitration Agreement in the Matter between F. Zhujiang Steel Tube Ltd Co and S. Panapond International Forwarding Co Ltd', Civil, 4 *Miscellaneous*, No. 7, 2009.

22 In many instances, Hong Kong remains a foreign legal system in contrast with mainland China legal system.

23 Under Art. 9 SPC Jud Int on Application of Law, where the parties have agreed that a foreign law applies, they are obliged to provide proof of that foreign law. Where the court applies a foreign law on the basis of the closest connection principle, the court should prove the content of the foreign law ex officio or alternatively, request the parties to do so.

nario of Art 16 of the SPC Jud Int on CAL.[24] The Hong Kong arbitration law (Arbitration Ordinance, CAP 341) would then be the applicable law.

When applying the Hong Kong law, Chinese courts have to conform to the rules of application of foreign laws, according to which, Chinese courts have an obligation to determine the content of the foreign law ex officio.[25] The SMC, however, erred in refusing to perform this duty and having applied the Chinese law instead.

The result ending with applying the CAL may easily confuse foreign practitioners and prompt the scepticism that Chinese courts remain hostile towards arbitration. However, our analysis reveals that judicial incompetence is the true trigger of the irrational decision-making. In many instances the so-called "homeward trend" arises from poor handling of the conflict of law issues. When Chinese courts comply with the due process of finding the law, the result will be less susceptible to the policy influence and more legal oriented. Thus, if the Chinese decisions want to gain more credibility, there should be a greater emphasis on the legal methods of "finding the law".

As a separate note, the SMC appeared to have also erred in the first step of determining the jurisdiction. The 1998 SPC Notice demands that any lower court should not render an arbitration agreement void unless it is approved by the SPC. Hence, the SMC actually had no authority to make such decision.

E. The Shanghai HPC's Decision

On appeal, the Shanghai HPC disagreed with the lower court's reading of the facts and law and reversed. However, as to its methodologies, there is significant room for improvement.

I. Meaning of the Agreement

The Shanghai HPC adopted the expert opinion on this point. According to the English rules of contract interpretation, the agreement was intended to mean that the arbitration would be held in Hong Kong and the English law would govern the substantive matters. The (Hong Kong) Arbitration Ordinance then would govern the arbitration procedures. However, the decision gave no reason for the English law being the rules of contract interpretation. Nor did it decide the admissibility of the expert opinion evidence.

II. Application of Law

The Shanghai HPC omitted the conflict of law issues. Instead, it conducted a dual examination under both the English and Hong Kong laws. On one hand, it observed that "the agreement was valid under the English law by agreeing that

24 Art. 16(2) SPC Jud Int on CAL reads: "(2) where the parties failed to reach such agreement (agreement on the proper law of the arbitration agreement) but they have agreed on the seat of the arbitration, the law of that place will apply."

25 Art. 9 SPC Jud Int on Application of Law.

the English law applies to the substantive matters and that any dispute should be resolved by arbitration in Hong Kong". On the other hand, it concluded that "the agreement was also valid and operative under the Hong Kong law". Obviously, this decision was guided by the expert opinion, although it was not held expressly conclusive. We, however, find sufficiency of the sole perspective under the Hong Kong law. It has been observed above that options are narrowed down by Art 16 of the Jud Int on CAL. The dual process does not appear to be necessary and may incur the waste of judicial resources.

We believe that the Shanghai HPC "coincidently" decided in favour of arbitration. There are three factors that led to this decision: the expert opinion, the common stance of the English and Hong Kong laws with regard to the validity of the arbitration agreement and the judge's pro-arbitration sentiment. These exact conditions do not exist in every case. It follows that the same case might be decided differently if the court did not hear the expert opinion, or if the English law holds differently from the Hong Kong law or if the judge is personally not arbitration-friendly. Thus, we conclude that the problem of inconsistency is unlikely to be solved unless the heart of controversy has shifted to focus on judicial methodologies.

F. Summary

Good judgement is a function of disputes solving and persuasive decision making. It is only possible through sound judicial methodologies. Therefore, not only is it important to produce satisfying results, but also it is equally important to ensure appropriate consistency in decision making by improving judicial methodologies.

In this sense, the two judgements may not be considered satisfactory because they show lack of professionalism and competence. First and foremost, there are several serious formal errors. As above noted, in its decision the SMC did not quote the entire arbitration clause. It also wrongly named the SPC regulation that it relied upon.[26] Secondly, neither the SMC nor the Shanghai HPC complied with the SPC's regulation on the reporting of cases. This fact *per se* is sufficient to render their jurisdictions unreasonable. Thirdly, there is no decision by the Shanghai HPC on the admissibility of the expert opinion. As a result, there was no reason for a decision based on the expert evidence. Lastly, the judgements did not set out clear lines or steps of legal reasoning and logical analysis. All these difficulties are essentially the issue of methodology. When a decision cannot be justified by judicial methodologies, it cannot be relied upon as an evidence for the pre-arbitration trend of Chinese courts. After all, the exhaustive efforts that the SPC has made are all meaningless, if justice and fairness does not come constantly.

26 The SMC had twice wrongly named the "SPC Jud Int on CAL" ("最高人民法院关于适用《中华人民共和国仲裁法》若干问题的解释") as "SPC Jud Int on Several Issues" ("最高人民法院关于适用若干问题的解释"). This mistake was corrected by the Shanghai HPC in its appeal decision.

Indeed, China is always striving to improve the judiciary quality. The fact is, however, that many judges, even those from Shanghai – the most developed region in China, remain insufficiently trained. This problem arises partly because Chinese law schools neglect the courses on judgement and decision making. It is still common today that students may never have read a sample of court decisions or lawyer's submissions during their studies. Their unfamiliarity with the form and methodology of judgement leads to the sad result that they are unable to apply the legal knowledge to real world problems. Unfortunately, bad habits are hard to get rid of, even after several years of practical experience.

G. General Conclusion

Clauses such as "Arbitration in (*Hong Kong*) and (*English*) Law to Apply" are often used in contracts between Chinese and foreign parties. We have, by the above analysis, shown that the Chinese law consists of solutions for disputes arising from such a clause, if right judicial methodologies are undertaken. In sum, the entire method should be conducted in the following steps.

The court should first confirm the existence of an arbitration agreement. This issue did not occur in the case at hand. It is more likely to take place when agreements are constituted after several rounds of negotiations, or when the contract is assigned or when the arbitration clause is incorporated by reference. After all, it is a matter of evidence. In theory, an arbitration agreement comes into force upon its formation, unless otherwise provided by the law or parties. Moreover, according to the doctrine of severability, the existence or validity of the underlying contract is in any case irrelevant.

In the next phase, the task is to ascertain the true intent of the parties. The method of interpretation has been addressed.

The third step is to investigate whether the *lex fori* contains any mandatory rules in relation to the validity of the arbitration clause. For instance, national laws may place limits on arbitrable issues. There may also be special rules for arbitration under trade or investment treaties.

The court will then look into the domestic conflict of law rules in order to ascertain the applicable law. In the Chinese practice, the party autonomy has the priority and where there is no choice of law made by the parties, conflict of laws rules will apply.

Next, the applicable law is to be ascertained. Notably, when a foreign law is deemed applicable, the burden of proof of the foreign law is to be allocated according to the domestic conflict of law rules.

The court will then decide the validity of the arbitration agreement. It is often necessary to invoke the rules of interpretation in that legal system.

However, where there is a gap, no matter with regard to the conflict rules or to the applicable law, the court is advised to fill the gap by means of the transnational law.

Suffice to say, the result achieved based on the above methods are rarely, if ever, challenged on the ground of public policy.

We want to emphasise again that the role of courts is, in its essence, to justify their decisions by way of legal reasoning. While the SPC's scrutiny helps to strengthen the accountability of those decisions, there is no true value without improving the judicial methodologies. This might also be true for many other developing legal systems, which now show more interest in shaping their legal frameworks by western legal norms than in developing legal methods on their own terms. In the end, the legal education reform is decisive, and that is how we can bridge the gap between the ideal and reality.