(2026) 38 SAcLJ 433
(Published on e-First 25 February 2026)

Case Comment

EXPANDING THE SCOPE OF CONTRACTUAL ANTI-SUIT INJUNCTIONS

Finaport Pte Ltd v Techteryx Ltd [2025] 1 SLR 1236

Should the Singapore High Court determine admissibility of claims before the Hong Kong High Court? In a recent development in cross-border injunctions, the Appellate Division of the High Court of Singapore granted a contractual anti-suit injunction in favour of a multi-tiered dispute resolution clause in the contract ("MTDR clause"). While agreeing that MTDR clauses are not jurisdiction clauses but only determine admissibility of claims, the court nonetheless injuncted the defendant from proceeding with its contractual claim before the Hong Kong High Court for initiating proceedings without following the mandatory pre-litigation procedure set out in the MTDR clause. This piece comments on the conceptual basis and exercise of discretion by the Singapore court in granting the injunction.

Kamakshi **PURI**
LLM (University of Cambridge); BA LLB Hons (Jindal Global Law School);
Dual Qualified Lawyer (India and England and Wales);
Senior Associate, Cyril Amarchand Mangaldas.

I. Introduction

1 The enforcement of mandatory multi-tiered dispute resolution clauses ("MTDR clauses") is gaining support globally. In *Finaport Pte Ltd v Techteryx Ltd*[1] ("*Finaport*"), the Appellate Division of the High Court in Singapore ("Appellate Division") expanded the grounds for a cross-border contractual anti-suit injunction. From an injunction in favour of a contractual right not to be sued in a non-agreed forum, derived from an exclusive jurisdiction or arbitration agreement, the relief was extended to an injunction in favour of a contractual provision setting out preconditions to an initiation of proceedings derived from an MTDR

1 [2025] 1 SLR 1236.

clause. While the case represents significant development for the restraint of foreign proceedings jurisprudence, the judgment may be viewed as an oversimplification of the principles governing the grant of a contractual anti-suit injunction. A detailed discussion or reasoning for applying the principles applicable to jurisdiction clauses to MTDR clauses, which the court itself noted are not jurisdiction clauses, was unfortunately missing.

2 In this background, this piece discusses whether, in the absence of a finding that the court in Hong Kong did not have jurisdiction, and short of holding that proceedings initiated in breach of the MTDR clauses were oppressive and vexatious, was the Appellate Division's interference appropriate? In other words, the piece will discuss whether there was a credible basis for the court to grant a contractual anti-suit injunction to the applicant, Finaport Pte Ltd.

3 While this case threw up interesting discussion on rights and obligations assumed by a claimant invoking the *Vandepitte* procedure (*ie*, a beneficiary stepping into the shoes of a trustee to enforce a contractual right of the trustee),[2] this piece will focus on the public international aspect of the court's decision to grant an anti-suit injunction in favor of an MTDR clause.

II. Factual background

4 In 2020, Techteryx Ltd ("Techteryx"), a British Virgin Islands entity, engaged First Digital Trust Limited ("FDT"), a Hong Kong-based escrow/custodian firm, to maintain USD reserves in escrow accounts under a Custodianship Agreement ("Custodianship Agreement"). The Custodianship Agreement was subject to Hong Kong law and jurisdiction of the courts of Hong Kong. FDT subsequently entered into a Discretionary Investment Management Agreement ("Investment Agreement") with Finaport Pte Ltd ("Fina"), a wealth management services and investment advisory firm, to act as an investment manager for Techteryx's USD reserves. The Investment Agreement was governed by Singapore law and subject to the non-exclusive jurisdiction of the courts of Singapore. While Techteryx was the ultimate beneficiary of the investment management services, it was not a party to the Investment Agreement. The MTDR clause in the Investment Agreement required FDT to, at the first instance, channel all grievances through Fina's Compliance Department, followed by attempts at negotiation and then

2 See *Vandepitte v Preferred Accident Insurance Corp of New York* [1933] AC 70 ("*Vandepitte*").

mediation before the Singapore Mediation Centre, before initiating proceedings for final resolution by litigation in the courts.

5 In 2023, Techteryx commenced composite proceedings against FDT and Fina in the Hong Kong Court of First Instance ("HKHC") for breach of trust and mismanagement of the USD reserves under the Custodianship Agreement, and for gross negligence and breach of an implied duty of reasonable care under the Investment Agreement ("Hong Kong Proceedings").[3] Since Techteryx was not a party to the Investment Agreement, Techteryx invoked the *Vandepitte* procedure[4] to exercise FDT's rights under the Investment Agreement.

6 In May 2024, Fina commenced proceedings in the General Division of the High Court of Singapore ("General Division") seeking contractual and non-contractual anti-suit injunction ("ASI") to injunct the Hong Kong Proceedings, and for a declaration that the HKHC did not have jurisdiction in respect of the subject-matter of the claim.[5] Fina submitted that its "primary case" was that the Hong Kong Proceedings were oppressive and vexatious as the dispute arose under the Investment Agreement subject to Singapore law, the natural forum for the dispute was Singapore, and that the claims against Fina were *doomed to fail*. As a "secondary case", Fina sought a contractual ASI submitting that non-compliance of the MTDR clause rendered the Hong Kong Proceedings "in breach of contract [the Investment Agreement]".

7 Techteryx argued that restraint of foreign proceedings in favour of contractual clauses was limited to cases involving an arbitration agreement or an exclusive jurisdiction clause. The phrase "*per se* violation of [a] contractual undertaking" had to be understood in the context of the violation of jurisdiction clauses. MTDR clauses, however, only rendered a claim premature and inadmissible *at this stage* as opposed to depriving the HKHC of jurisdiction altogether.

---

3 The initial claims against Fina were contractual. Later claims for fraud, misrepresentation and conspiracy were added. Fina's application for an anti-suit injunction was limited to the contractual claim against Fina under the Investment Agreement.

4 The *Vandepitte* procedure crystallises the right of a beneficiary to sue a third party in the name of the trustee where the trustee refuses to exercise the right available to him. The rule allows a "procedural shortcut" to the beneficiary by coalescing two different causes of action into one process – *ie*, action by beneficiary for breach of trust against the trustee for refusing to exercise right to sue and action by trustee against the wrongdoing third party: *Vandepitte v Preferred Accident Insurance Corp of New York* [1933] AC 70 cited in *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [40]. The cause of action remains the trustee's alone and the third party is sued in the name of the trustee: *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [45].

5 [2024] SGHC 329.

8 Why would a contractual ASI – arguably the most direct means of achieving an ASI[6] – be Fina's *secondary* case? It is because an MTDR clause is not a jurisdiction clause and does not go to the heart of the HKHC's jurisdiction. An ASI in favour of the MTDR clause, even if granted, would only delay the Hong Kong Proceedings. The proceedings would however inevitably ensue, once the pre-litigation conditions are satisfied.

III. Appellate Division's decision

9 On 30 July 2024, the General Division rejected Fina's ASI Application. On appeal, which is the decision under discussion, the Appellate Division:

(a) rejected the non-contractual ASI, on the basis that the Hong Kong Proceedings were not oppressive and vexatious[7]; and

(b) granted a partial, contractual ASI on the basis that contractual anti-suit injunctions could be granted where there was a "*per se* violation of [a] contractual undertaking".[8]

10 This article focuses its discussion on the Appellate Division's basis for granting the contractual ASI, namely:

(a) A contractual ASI may be granted irrespective of whether the conduct of foreign proceedings is vexatious or oppressive.[9]

(b) The basis for a contractual ASI is the court's "equitable jurisdiction to ensure that contractual bargains are honoured".[10] This meant an ASI could be granted if the pursuit of Hong Kong Proceedings violated any clause of the Investment Agreement.[11]

---

6 As held in *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732, in cases involving an arbitration agreement, it would suffice to show that there was a breach of such agreement, and anti-suit relief would ordinarily be granted unless there are strong reasons not to. There would be no need to adduce additional evidence of unconscionable conduct in such cases.

7 The court considered it unnecessary to determine whether or not Singapore was the natural forum for the dispute noting that it would be "inconsistent with comity for a Singapore court to restrain proceedings before the foreign court simply because Singapore was the more appropriate forum to adjudicate the dispute": *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [60] and [67].

8 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [52].

9 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [39] relying on *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732.

10 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [39].

11 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [46].

(c) The Appellate Division's jurisdiction to enforce the contract and restrain the violation of an undertaking was "all the same, regardless of whether the clause being breached [was] an MTDR Clause or an arbitration or exclusive jurisdiction clause".[12]

11 Techteryx's objection that the Hong Kong Proceedings were broader than just the contractual claims under the Investment Agreement were addressed by the Appellate Division by granting a "partial" ASI, *ie*, an injunction only in respect of the contractual claims arising in connection with the Investment Agreement.[13]

12 Techteryx's submissions in respect of the impracticality of the MTDR procedure for a beneficiary requiring active participation of the trustee were rejected[14] on the basis that the entire contractual bargain by the trustee was adopted by the beneficiary[15] and that Fina had, during the proceedings, indicated on record their amenability to negotiating and mediating with Techteryx.

IV. Analysis

A. Conceptual basis for an anti-suit injunction

13 An ASI is an action to restrain foreign proceedings available to a party who can show that the defendant has remedies available in more than one court, and injustice would perpetuate if foreign proceedings were allowed to continue. While the conceptual basis for non-contractual ASIs lies in the fact that the foreign proceedings are "oppressive and vexatious", the basis for contractual ASIs lies in the fact that the foreign proceedings are initiated in breach of a contractual obligation to submit the dispute to the exclusive jurisdiction of the granting court or to arbitration.[16] While anti-suit injunctions have become somewhat "commonplace",[17] it is important to not lose sight of what they really are – an interference with the process and procedure of the foreign court.[18] The interference

12 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [32].
13 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [52]–[53].
14 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [49].
15 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [50].
16 *Donohue v Armco Inc* [2001] UKHL 64 at [53].
17 *Ecobank Transnational Inc v Tanoh* [2016] 1 WLR 2231 at 2249; [2015] EWCA Civ 1309 at [84]: "As a result anti-suit injunctions have become relatively commonplace when the basis on which they are sought is that parties have agreed to arbitrate the dispute or have agreed that the English court shall have exclusive jurisdiction."
18 *Masri v Consolidated Contractors International (UK) Ltd (No 3)* [2009] QB 503 at 514; [2008] EWCA Civ 625 at [17]: "The judge failed to take into account that

(cont'd on the next page)

is however justified on the basis that an ASI is a *remedy* for the abuse of process being perpetrated in the foreign proceedings, and the injustice being caused from a breach of the party's right not to be sued in any forum other than the agreed forum.

14 The conceptual basis and jurisprudential development of contractual ASIs is closely linked to jurisdiction agreements and breach thereof. In *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd*[19] ("*Sun Travels*"), a case reiterating the principles of an anti-suit injunction, and one heavily relied on by the Appellate Division in its decision, the court specifically set out that:[20]

> … *in cases involving an arbitration agreement or an exclusive jurisdiction* it would suffice to show that there was a breach of such an agreement, and anti-suit relief would ordinarily be granted unless there are strong reasons not to… There will be no need to adduce additional evidence of unconscionable conduct in such cases. [emphasis added]

This was also the holding in *Donohue v Armco Inc*[21] ("*Donohue*"), the *locus classicus* on contractual anti-suit injunctions in England.

15 All case law relied on by the Appellate Division, including *Sun Travels* and *Donohue* was in the context of jurisdiction agreements. In light of the clear context and express language in support of contractual ASIs, to accept the Appellate Division's leap that ASIs could be granted for contractual bargains other than jurisdiction agreements – "regardless of whether the clause being breached is characterised as an MTDR Clause or an arbitration or exclusive jurisdiction clause"[22] – called for solid reasoning from the court. Unfortunately, this was wholly absent. In fact, by allowing a contractual ASI in the context of a non-exclusive jurisdiction agreement, the decision runs counter to a plethora of cases which have specifically held that in non-exclusive jurisdiction agreements, different factors are to be considered and there is a separate basis on which an anti-suit injunction may be granted.[23]

---

the jurisdiction is to be exercised exceptionally and in accordance with principles of comity. Nor did he take into account the fact that an anti-suit injunction is at least an *indirect* interference with the exercise of jurisdiction by the relevant foreign court, and that particular restraint is therefore necessary."

19 [2019] 1 SLR 732.

20 *Sun Travels & Tours Pvt Ltd v Hilton International Manage (Maldives) Pvt Ltd* [2019] 1 SLR 732 at [68].

21 [2001] UKHL 64.

22 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [32].

23 Among others, see *John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 at [29]; *UBS AG v Telesto Investments Ltd* [2011] 4 SLR 503 at [111]; *BC Andaman Co Ltd v Xie Ning Yun* [2017] 4 SLR 1232 at [53]; *Lakshmi Anil Salgaocar v Jhaveri Darsan Jitendra* [2019] 4 SLR 1023 at [15]; *The Angelic Grace* [1995] 1 Lloyd's *(cont'd on the next page)*

16 One option was for the Appellate Division to show that MTDR clauses are akin to arbitration agreements or exclusive jurisdiction agreements, or at least that they had the same effect on the parties' rights under contract. Instead, the court seemed to have accepted that all contractual clauses are alike. For this reason, it is relevant to discuss whether MTDR clauses are akin to jurisdiction clauses, and the effect of jurisdiction clauses in an agreement as compared with other contractual clauses.

B. Are multi-tiered dispute resolution clauses akin to jurisdiction clauses?

17 MTDR clauses have been widely discussed in the context of pre-arbitration clauses, or escalation clauses (as they have come to be referred to). This section will discuss two defining elements of MTDR clauses. The first is whether MTDR clauses are non-obligatory, more "permissive" rather than "mandatory" preconditions. The second is whether MTDR clauses impact the jurisdiction of a court/tribunal ultimately hearing the claim.

18 The first question is important since if MTDR clauses are non-binding and non-mandatory in nature, there would be little to no consequences arising from a breach of such clauses. If it is accepted that MTDR clauses are by their very nature aspirational, and reflect a desire to attempt to reach a mutually acceptable result, with no commitment or agreement for parties to reach a resolution they would be non-obligatory. The general consensus is that the determination of whether the clause is aspirational or obligatory would be a function of contractual construction.[24] The enforceability of MTDR clauses would thus depend on the clarity, precision and certainty of the clauses, all of which require interpretation and detailed assessment by the court.[25] Courts have held that where "parties have clearly contracted for a specific set of dispute resolution procedures as preconditions for arbitration, those preconditions *must be fulfilled*" [emphasis added].[26] The prescription of a specific procedure as a condition precedent to arbitration or litigation would thus, ordinarily indicate the intent to treat it as mandatory.

Rep 87 at 96; and *WSG Nimbus Pte Ltd v Board of Control for Cricket in Sri Lanka* [2002] 1 SLR(R) 1088 at [91].

24 See Darius Chan & Joel Soon, "Non-Satisfaction of Pre-Arbitration Requirements: Moving Away from Conditions Precedent Towards the Admissibility of a Claim" [2022] Sing JLS 450 at 460–461.

25 *Kajima Construction Europe (UK) Ltd v Children's Ark Partnership Ltd* [2023] EWCA Civ 292.

26 *International Research Corp PLC v Lufthansa Systems Asia Pacific Pte Ltd* [2014] 1 SLR 130 at [62].

19 Breach of a mandatory procedure comes with consequences. This brings us to the second element of the nature of MTDR clauses: determining whether a breach has consequences on the jurisdiction of the court/tribunal hearing the claim. In a landmark case before the Hong Kong High Court, *C v D*,[27] C made an application to set aside an arbitral award claiming that the tribunal did not have jurisdiction because the requirement of pre-arbitration negotiation, which was a condition precedent, had not been complied with. This led the court to frame the following question: Does compliance with the dispute resolution procedure – the MTDR clauses – raise a question on admissibility of the claim or impact the jurisdiction of the tribunal? The award would be set aside only if it were the latter, whereas the former would be a matter for the tribunal to determine.

20 What is the difference between "jurisdiction" and "admissibility" claims? Admissibility relates to whether it is appropriate for a claim to be heard by the tribunal, whereas jurisdiction concerns the power of the tribunal to decide the matter,[28] *ie*, jurisdiction provides a court with the authority to determine a matter.[29] Challenges on the basis of whether a claim is time barred, barred by *res judicata*, hit by the doctrine of accord and satisfaction, all go to the admissibility of the claim. To assist with determining whether an issue is one of jurisdiction or admissibility, the Singapore Court of Appeal in *BBA v BAZ*[30] proposed the "tribunal versus claim" test, which asks the question of whether the objection is targeted at the tribunal (*ie*, the claim should not be arbitrated due to a defect in or omission to contest to arbitration), or at the claim (*ie*, the claim itself is defective and should not be raised).[31]

21 The court in *C v D* held that the question of non-compliance of pre-arbitration procedures goes to the admissibility of the claim rather than the jurisdiction of the tribunal. In reaching its conclusion, the court heavily relied on international jurisprudence, including a Singapore Court of Appeal decision in *BTN v BTP*[32]. In that case, the Singapore court had held that "tribunals' decisions on objections regarding preconditions to

27 [2022] HKCA 729.
28 *Republic of Sierra Leone v SL Mining Ltd* [2021] EWHC 286 (Comm).
29 See *NWA v NVF* [2021] EWHC 2666; and Alexander Jollies, "Consequences of Multi-tier Arbitration Clauses: Issues of Enforcement" (2006) 72 *Arbitration* 4. This is also the reason why the tribunal's finding on the consequences of a party's non-compliance with pre-arbitration requirements is generally not reviewable by the courts: see Darius Chan & Joel Soon, "Non-Satisfaction of Pre-Arbitration Requirements: Moving Away from Conditions Precedent Towards the Admissibility of a Claim" [2022] Sing JLS 450 at 455.
30 [2020] 2 SLR 453.
31 *BBA v BAZ* [2020] 2 SLR 453.
32 [2021] 1 SLR 276.

arbitration, like time limits, the fulfilment of conditions precedent such as conciliation provisions before arbitration may be pursued, mootness and ripeness are matters of admissibility, not jurisdiction".[33] Accordingly, it came to be accepted that admissibility of claims are unlike jurisdiction clauses and are matters for the tribunal, having assumed jurisdiction of the dispute, to adjudicate on.

22 In *Finaport*, the Appellate Division itself stated that the MTDR clause was a matter of admissibility not jurisdiction.[34] The court held that the MTDR clause rendered the claim "premature and inadmissible *at this stage*" [emphasis in original],[35] unlike exclusive jurisdiction or arbitration clauses, which impacted the jurisdiction of the Hong Kong court. At the same time, the court applied the principles governing the grant of ASI in the context of exclusive jurisdiction and arbitration clauses to MTDR clauses.

C. Appellate Division's exercise of discretion

23 Courts have recognised that since ASIs indirectly affect foreign courts, the jurisdiction is one which must be exercised with caution and due regard must be had to comity between courts.[36] The doctrine of comity stands for the recognition by the courts of one jurisdiction of the laws and decisions of the other. Comity dictates that a court should have sufficient interest in, or connection with the matter in question to justify the indirect interference with the foreign court which an anti-suit injunction entails.[37]

24 Contractual ASIs are considered not contrary to comity, but in furtherance of it on the basis that "whatever country it is to the courts of which the parties have agreed to submit their disputes is the country to which comity is due".[38] In other words, since parties agreed to designate a specific jurisdiction as their decision maker, comity was due to the court which the parties picked. This, however, is not the case for non-exclusive

33 *BTN v BTP* [2021] 1 SLR 276; [2020] SGCA 105 at [70].
34 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [52].
35 *Finaport Pte Ltd v Techteryx Ltd* [2025] 1 SLR 1236 at [52].
36 *Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871; *Deutsche Bank AG v Highland Crusader Offshore Partners LP* [2009] EWCA Civ 725; [2009] 2 Lloyd's Rep 617 at [50]; *John Reginald Stott Kirkham v Trane US Inc* [2009] 4 SLR(R) 428 at [25].
37 *Airbus Industrie GIE v Patel* [1999] 1 AC 119; [1998] UKHL 12.
38 *OT Africa Line Ltd v Magic Sportswear Corp* [2005] EWCA Civ 710 at [32].

jurisdiction agreements where comity is an important consideration. It is settled law that in cases other than exclusive jurisdiction agreements:[39]

> … the principle of comity requires the court to recognise that, in deciding questions of weight to be attached to different factors, different judges operating under different legal systems with different legal policies may legitimately arrive at different answers, without occasioning a breach of customary international law or manifest injustice, and that in such circumstances it is not for an English court to arrogate to itself the decision how a foreign court should determine the matter. The stronger the connection of the foreign court with the parties and the subject matter of the dispute, the stronger the argument against intervention.

25 Comity is one of the factors that guide the courts' discretion. Comity considerations, however, remained unaddressed in the Appellate Division's decision in *Finaport*. In fact, any discussion on the exercise of discretion was wholly missing. Other factors in the exercise of discretion include an assessment of balance of justice between the parties, with the court denying relief if it would be unjust to the respondent.[40] It is settled law that a court ought to weigh the injustice to the ASI applicant against the injustice to the defendant in not being permitted to take action before the foreign court.[41]

26 Serious objections were raised on the applicability of the MTDR clause to Techteryx, including whether Techteryx could even be bound by such obligation and the practicality of the clauses considering it created a "catch 22 situation" since Techteryx could not possibly initiate negotiation or mediation as a third party. These considerations fell within the Hong Kong court's jurisdiction to decide.

27 Techteryx also raised the issue that the contractual claim was only one of the composite claims being pursued in the Hong Kong Proceedings. The presence of composite claims before the other court is one of the grounds for refusing even a contractual ASI. In *Donohue*, the English court noted that: [42]

---

39 *Deutsche Bank AG v Highland Crusader Offshore Partners LP* [2010] 1 WLR 1023 at 1036; [2009] EWCA Civ 725 at [50].

40 Delay in approaching the court is one of the most litigated factors for parties defending the grant of an anti-suit injunction. It however has little relevance on facts and therefore not discussed here. However, see, *inter alia*, *SAS Institute Inc v World Programming Ltd* [2020] EWCA Civ 599 at [105]–[107] and *Donohue v Armco Inc* [2001] UKHL 64.

41 *Société Nationale Industrielle Aérospatiale v Lee Kui Jak* [1987] AC 871.

42 See *Donohue v Armco Inc* [2001] UKHL 64 at [27], also citing *Citi-March Ltd v Neptune Orient Lines Ltd* [1996] 1 WLR 1367 and *Mahavir Minerals Ltd v Cho Yang Shipping Co Ltd (The M C Pearl)* [1997] 1 Lloyd's Rep 566, both cases involving an anti-suit injunction on proceedings which involved third parties. The court held that

(cont'd on the next page)

> [Courts] decline to grant an injunction or a stay, as the case may be, where the interests of parties other than the parties bound by the exclusive jurisdiction clause are involved or grounds of claim not the subject of the clause are part of the relevant dispute so that there is a risk of parallel proceedings and inconsistent decisions.

The Appellate Division failed to explain its basis for granting a partial injunction restraining Techteryx's composite claim in the Hong Kong Proceedings.

28 Once the court held that MTDR clauses are not jurisdiction clauses, it followed that the Hong Kong Court was validly exercising jurisdiction even if there was breach of the MTDR clauses. The non-exclusive jurisdiction agreement had been activated in favour of the Hong Kong court. A direct corollary was that it was within the Hong Kong Court's authority to decide whether there was a breach and if the claims were premature. In light of the above, it is submitted that considerations of justice and comity would require a court exercising jurisdiction to interpret the MTDR clause so as to consider whether the claims were premature due to a breach of contract, and to determine the appropriate consequence for initiating proceedings in violation of the MTDR clause.

V. Conclusion

29 This case has far-reaching consequences for the restraint of proceedings jurisprudence. The Appellate Division in *Finaport* held that a contractual ASI may be granted where there is a "*per se* violation" of contract. Parties regularly contract on and include clauses for contractual limitation of claims, waiver and settlement, *etc*. The settled law today is that the interpretation of such clauses, to determine whether claims are in breach, is a matter for determination by the courts/tribunals hearing the merits of the dispute. Objections on the basis of such contractual undertakings are treated like any other legal objection to the claim, even if they are determined as preliminary issues relating to the maintainability of the claim. Even if the remit of *Finaport* is limited to MTDR clauses (notwithstanding that the judgment is silent on why MTDR clauses are closer to jurisdiction clauses than the other clauses identified above), it remains unclear why a foreign court should determine the scope and interpretation of an MTDR clause.

30 By applying principles applicable to exclusive jurisdiction agreements to a case involving a non-exclusive jurisdiction clause,

---

an injunction in favour of an exclusive jurisdiction agreement would not only be a source of inconvenience but also a potential source of injustice.

Finaport has set a precedent where parties can seek an injunction to restrain foreign proceedings initiated in breach of *any* contractual clause. It is respectfully submitted that for a case having such far-reaching consequences, the Appellate Division's holding of "*per se* violation" of contract may be viewed as an oversimplification unaccompanied by sufficient reasoning to support this shift in law.
