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LEGAL INSIGHT

PIERCING THE CORPORATE VEIL TO ENFORCE AN ARBITRAL AWARD IN ZAMBIA

Introduction

Arbitration has emerged as a preferred method of dispute resolution in commercial or business disputes due to its efficiency, confidentiality, and flexibility. An arbitral award being the final decision rendered by an arbitral tribunal, holds significant weight in resolving disputes. However, the enforcement of such awards often necessitates judicial intervention to ensure compliance.

One of the complex legal doctrines that occasionally surfaces during this phase of enforcement is the concept of "piercing the corporate veil." This doctrine, traditionally rooted in corporate law, allows Courts to hold shareholders or parent companies liable for the obligations of their subsidiaries under certain circumstances. In the context of enforcement of arbitral awards, piercing the corporate veil can play a pivotal role in ensuring that justice is served, especially when a party attempts to evade liability through the corporate veil. This article explores the effect of an arbitral award and the extent to which courts can assist in its enforcement.

Effect of an Arbitral Award

An arbitral award is final and binding on the parties involved in the arbitration process. It serves as a conclusive resolution to the dispute, akin to a judgment in a court of law. An award typically includes determinations on the rights and obligations of the parties, monetary compensation, and other remedies deemed appropriate by the tribunal.

In Zambia, judicial precedent firmly establishes that non-parties to an arbitration agreement are not bound by its terms or outcomes. Courts have consistently held that third parties cannot be joined to arbitral proceedings. If a third party wishes to be heard on an incidental matter, they must approach the court independently. This position is grounded in the principle that arbitration agreements are contractual in nature and binding only on the parties who have expressly consented to them. Consequently, the inclusion of non-parties in the enforcement of arbitral awards would undermine the consensual nature of arbitration. This judicial stance introduces complex jurisdictional issues, particularly regarding the applicability of piercing the corporate veil when the structure of a corporation is used as a shield against liability from an arbitral award. Furthermore, this limitation necessitates thorough consideration when drafting arbitration clauses, especially in commercial contexts where complex corporate structures are involved.

Understanding the Corporate Veil

The corporate veil is a legal construct that separates the identity of a corporation from its shareholders which protects them from personal liability for the corporation's debts and obligations. This separation is fundamental to the concept of limited liability, which encourages investment and entrepreneurship. However, this protection is not absolute. Courts may decide to pierce the corporate veil when a corporation is used as a mere façade to perpetrate fraud, evade legal obligations, or when the corporate structure is so intertwined with the personal dealings of its owners that it loses its separate identity. Despite these factors, piercing the corporate veil in arbitral award enforcement is fraught with challenges. The doctrine is applied sparingly, and Courts are generally reluctant to override the principle of limited liability without compelling evidence.

Application in Arbitral Award Enforcement

While arbitral awards are binding, their enforcement may require judicial assistance, especially when a party fails to comply voluntarily. Courts play a crucial role in the enforcement of arbitral awards, providing mechanisms to compel compliance and address challenges to the award's validity. Courts can assist in the recognition and enforcement of arbitral awards by vesting them with a status of judgments. This process involves verifying the award's compliance with legal standards and ensuring it does not contravene public policy. Once recognized and registered, the award can be enforced like any court judgment, allowing for measures such as asset seizure or garnishment.

In the enforcement of arbitral awards, piercing the corporate veil becomes relevant when the award debtor is a corporation that appears to be insolvent or lacks sufficient assets to satisfy the award. In such cases, the award creditor may seek to hold the parent company or shareholders liable, arguing that the corporate structure was used to shield assets or evade the award. However, the Zambian Supreme Court, in the case of Star Drilling and Exploration Limited vs. National Technologies Limited and Ors (2025) ZMSC 7, firmly rejected post-award veil piercing, emphasizing that enforcing an arbitral award should not involve altering its terms to include non-parties. The Court reasoned that allowing post-award veil piercing would effectively undermine the principle of finality in arbitration and violate the due process rights of entities not initially party to the arbitration proceedings. Furthermore, the Court clarified that the enforcement of an arbitral award should strictly follow established judicial procedures without altering the substance of the award.

Implications and Practical Considerations

The Supreme Court's decision in Star Drilling underscores the need for careful identification of parties in arbitration agreements. The parties to an arbitration agreement must ensure that the entities likely to bear liability are explicitly included from the outset. This approach mitigates the risk of encountering enforcement challenges, particularly when dealing with insolvent or undercapitalized corporate entities.

Additionally, parties should thoroughly assess the corporate structure of potential parties to anticipate possible complications. This includes examining whether a corporate entity is a mere instrument of its parent company or shareholders, as this could influence enforcement strategies. Appropriate drafting should also incorporate provisions that address potential insolvency issues or specify liability extensions to parent entities when appropriate.

Further, parties must assess the possibility of recovery before under going the arbitration process in order to save time and costs.

Conclusion

Piercing the corporate veil in arbitral award enforcement remains a complex and nuanced area of law. While it offers a mechanism to ensure that justice is not thwarted by corporate maneuvering, it requires careful consideration of legal standards and jurisdictional differences. In Zambia, the Supreme Court has settled the law on post-award intervention, upholding the finality of arbitration and the principle of limited liability. Therefore, parties must exercise due diligence in assessing a company's financial stability before entering into agreements or when deciding to proceed to arbitration in order to avoid complications during enforcement.

We hope you found this alert useful. Please contact our Dispute Resolution and Public Policy Partner and Associate, Sydney Chisenga at SChisenga@corpus.co.zm and Francis Muzimu at FMuzimu@corpus.co.zm respectively, if you have any questions relating to this legal alert.

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