The Congo Case, State Immunity and What It Means for Business in Hong Kong

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Introduction

On 8 June 2011, Hong Kong's highest court, the Court of Final Appeal ("CFA"), handed down its long-awaited judgment on the issue of State immunity in the "the Congo Case [1]".

The decision has caused a stir amongst the business, legal and political communities as it broke ground on Hong Kong's constitutional law, as well as having an impact on doing business with foreign governments in Hong Kong.

The main issue was whether a foreign State could be sued in Hong Kong's courts - to recover debts from a business deal. In handling the matter, however, the judiciary was forced to discuss matters relating to the independence of Hong Kong's legal system.

The facts of the case involve a U.S. vulture fund seeking to recover debts from the Democratic Republic of the Congo ("DRC") in the Hong Kong courts. Having brought arbitration proceedings in France and Switzerland, the fund was seeking to enforce those arbitral awards in the Hong Kong courts, on the basis that the DRC had assets in Hong Kong. The DRC sought to assert State immunity from proceedings in the Hong Kong courts.

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