

**IN THE COURT OF FINAL APPEAL OF THE
HONG KONG SPECIAL ADMINISTRATIVE REGION**

**MISCELLANEOUS PROCEEDINGS NO. 20 OF 2017 (CIVIL)
(ON APPLICATION FOR LEAVE TO APPEAL FROM
CACV NO. 272 OF 2015)**

BETWEEN

- (1) ASTRO NUSANTARA INTERNATIONAL B.V.
- (2) ASTRO NUSANTARA HOLDINGS B.V.
- (3) ASTRO MULTIMEDIA CORPORATION N.V.
- (4) ASTRO MULTIMEDIA N.V.
- (5) ASTRO OVERSEAS LIMITED (formerly
known as AAAN (Bermuda) Limited)
- (6) ASTRO ALL ASIA NETWORKS PLC
- (7) MEASAT BROADCAST NETWORK
SYSTEMS SDN BHD
- (8) ALL ASIA MULTIMEDIA NETWORK FZ-LLC

Applicants/Claimants in the Arbitration/
Judgment Creditors
(Respondents)

and

- (1) PT AYUNDA PRIMA MITRA
- (2) PT FIRST MEDIA TBK (formerly known
as PT BROADBAND MULTIMEDIA TBK) (Applicant)
- (3) PT DIRECT VISION

Defendants/Respondents in the Arbitration/
Judgment Debtors

Appeal Committee : Mr Justice Ribeiro PJ, Mr Justice Tang PJ and
Mr Justice Fok PJ

Date of Hearing and
Determination : 18 August 2017

DETERMINATION

Mr Justice Ribeiro PJ:

1. The applicant seeks leave to appeal against the judgment of the Court of Appeal¹ dismissing their appeal from the judgment of Chow J² refusing them an extension of time to apply to set aside certain orders of the Court of First Instance for the enforcement of certain Singapore arbitration awards.

2. Leave is sought on the basis of the following questions of law said to be of the requisite general or public importance namely:

- (1) What is the proper test for determining whether an extension of time should be granted for the purposes of an application to resist enforcement of an arbitral award under the 1958 New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards (“the New York Convention”)? (“Question 1”)
- (2) In determining whether to extend time for the purposes of an application to resist enforcement of an arbitral award under the New York Convention, is the fact that the award has not been set aside by the courts of the seat of arbitration a relevant factor? (“Question 2”)
- (3) What is the proper test for determining whether a party seeking to enforce an award under the New York Convention has produced the original arbitration agreement or a duly certified copy of it within the meaning of s 43 of the Arbitration Ordinance (Cap 341)³ (“the Ordinance”)? (“Question 3”)

¹ Kwan JA and Lok J, CACV 272 of 2015 (5 December 2016).

² HCCT 45/2010 (17 February 2015).

³ Cap 341 has since been repealed and replaced by the Arbitration Ordinance, Cap 609.

3. The applicant also seeks leave on the “or otherwise” ground on the basis that the circumstances are exceptional in that the judgments below entitle the respondents to enforce awards amounting to more than US\$130 million although, the applicant contends, it is accepted and incontestable in the Hong Kong courts that the awards were rendered without jurisdiction and that the respondents would suffer no prejudice if an extension of time were granted.

4. We are satisfied that leave should be granted in respect of Questions 1 and 2, but not Question 3. We are also satisfied that leave on the “or otherwise” ground should be granted.

5. The appeal will be heard on 12 and 13 March 2018.

(R A V Ribeiro)
Permanent Judge

(Robert Tang)
Permanent Judge

(Joseph Fok)
Permanent Judge

Mr Toby Landau, QC, Mr Mark Strachan SC and Mr Jeffery Chau, instructed by Cordells, for the Applicant

Mr David Joseph QC, Mr Bernard Man SC and Mr Justin Ho, instructed by Clifford Chance, for the Respondents

