

## How A Confusion Clause Shapes Jurisdiction Battles — Arbitration or Court?

### Introduction

Recently, the English Commercial Court in **Tyson International Company Limited v GIC RE, India, Corporate Member Limited** [2025] EWHC 77 (Comm) (“GIC case”) delivered a significant decision, holding that the English jurisdiction clause prevails over the arbitration clause despite the Court’s generally pro-arbitration stance that Malaysia adopts as well.

### Brief facts of the case

Tyson International Company Ltd (“TICL”) entered into a reinsurance agreement with GIC RE, India, Corporate Member Ltd (“GIC”) through Market Reform Contracts (“MRC”) (policy documents), which contained an English law and jurisdiction clause in the following terms:

*“This Reinsurance shall be governed by and construed according to the Laws of England and Wales. The Courts of England and Wales shall have exclusive jurisdiction of the parties hereto on all matters relating to this insurance.”*

Subsequently, Facultative Certificates (which are based on a US standard form known as Market Uniform Reinsurance Agreement (“MURA”)), were issued in respect of each policy and executed by the parties. The Facultative Certificates contain an arbitration clause and a “Confusion Clause” which states as follows:

*“RI slip [MRC] to take precedence over reinsurance certificate [Facultative Certificates] in case of confusion.”*

A dispute arose over which agreement governed the parties’ obligations. TICL sought an anti-suit injunction in the English courts to prevent GIC from pursuing arbitration in New York, arguing that the MRC should take precedence.

# Arbitration Update

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## Court's decision

The High Court agreed that the facultative certificate was a contractual document, which was intended to supersede the contract found in the MRC (See Court of Appeal's decision in **Tyson International Company Limited v Partner Reinsurance Europe SE** [2024] EWCA Civ 363 ("Partner Reinsurance case")). In the **Partner Reinsurance case**, a similar jurisdiction challenge was taken where the MRC provided for English Law and jurisdiction clause whilst the subsequent Facultative Certificates contained an arbitration agreement. There, the Court of Appeal stayed the English court proceedings.

However, there was a distinguishing feature in the **GIC case**, as the Facultative Certificates contain a "*Confusion Clause*" which provides that the MRC takes precedence over the Facultative Certificates in case of confusion.

Having found that there was confusion in this case between the jurisdictional clause in the MRC and the arbitration agreement in the Facultative Certificates, the Court held that the English law and jurisdiction clause in MRC prevails.

## Key takeaways

The **GIC case** serves as a reminder to drafters of commercial contracts that a "*Confusion Clause*" can influence the Court's interpretation of jurisdictional provisions in a jurisdictional battle, despite its pro-arbitration stance.

In Malaysia, we find a case similar to the GIC case. In **Lembaga Pelabuhan Klang v Kuala Dimensi Sdn Bhd** [2010] 9 CLJ 532, there was an arbitration agreement in the principal agreement and subsequently a supplemental agreement that contained a "*submission to court jurisdiction clause*". The Malaysian Court of Appeal refused to stay the Court proceedings pursuant to section 10 of the **Arbitration Act 2005**.

Among others, the Court held that there was an express provision that the supplemental agreement prevails over the principal agreement in the event of any conflict, indicating the parties abandoned the arbitration agreement in the principal agreement by the subsequent supplemental agreement.

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