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A short note on *forum non conveniens*

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The doctrine of *forum non conveniens*

According to Black's Law Dictionary, *forum non conveniens* (FNC) refers to the discretionary power of a court to decline jurisdiction when convenience of the parties and the ends of justice would be better served if action were brought and tried elsewhere.

Relationship between FNC and the courts' jurisdiction

A court may have jurisdiction to try and hear cases brought before it pursuant to its inherent power or any specific statutory provision. However, it may decline its jurisdiction over the same due on the grounds of FNC.

Does a Malaysian Court have jurisdiction to try a case?

Section 23 of the *Courts of Judicature Act* 1964 provides that Malaysian courts have the jurisdiction and power to preside over any case where the cause of action arises in Malaysia; where the defendant or one of several defendants resides or has his place of business in Malaysia; where the facts on which the proceedings are based exist or are alleged to have occurred in Malaysia; or where any land the ownership of which is disputed is situated in Malaysia.

Do the Malaysian Courts recognise FNC?

In the case of ***American Express Bank Ltd. V. Mohamad Toufic Al-Ozeir & Anor [1995] 1 CLJ 273***, the Supreme Court of Malaysia ruled that even though a Malaysian court has jurisdiction to entertain the claim between the parties, the court still has the discretion to decide whether to deal with the case or otherwise, based on FNC principles. This suggests that even after a court has made a positive ruling on jurisdiction to hear a claim, it can still exercise discretion to allow the application of a party to have the case tried in another suitable and convenient forum.

Do the English Courts recognise FNC?

By virtue of the celebrated case of ***Spiliada Maritime Corp v Cansulex Ltd [1987] A.C. 460, 475-478***, the House of Lords declared that English courts recognise the FNC doctrine as a discretionary power of the court. In that case, Lord Goff stipulated:

> *'The basic principle is that a stay will only be granted on the ground of* forum non conveniens *where the court is satisfied that there is some other available forum, having jurisdiction, which is the appropriate forum for trial of the action, i.e. in which the case may be tried more suitably for the interest of all the parties and the ends of justice.'*

Do courts in the EU recognise FNC?

Pursuant to the Brussels Convention 1968, courts in European Union (EU) countries have exclusive jurisdiction to hear any claim between parties where one or more party is domiciled in any EU country, and where the parties have agreed that the courts of EU countries are to have jurisdiction. The convention provides that these courts have no discretion to decline jurisdiction on the grounds of FNC, and that other courts have no power to override the jurisdiction agreement between the parties. In the recent case of ***Owusu v Jackson [2005] 1 Lloyd's Rep 452***, the European Court of Justice declared:

> *'The Brussels Convention precludes a court of a Contracting State… from declining jurisdiction conferred on it by Article 2 of that Convention on the ground that a court of a non-Contracting State would be more appropriate forum for the trial of the action even if the jurisdiction of no other Contracting State is in issue or the proceedings have no connecting factors to any other Contracting State."*

Conclusion

FNC is well recognised under the administration of justice system in Malaysia as well as in England. However, FNC is not applicable in EU countries when the case falls within the ambit of the Brussels Convention 1968.

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