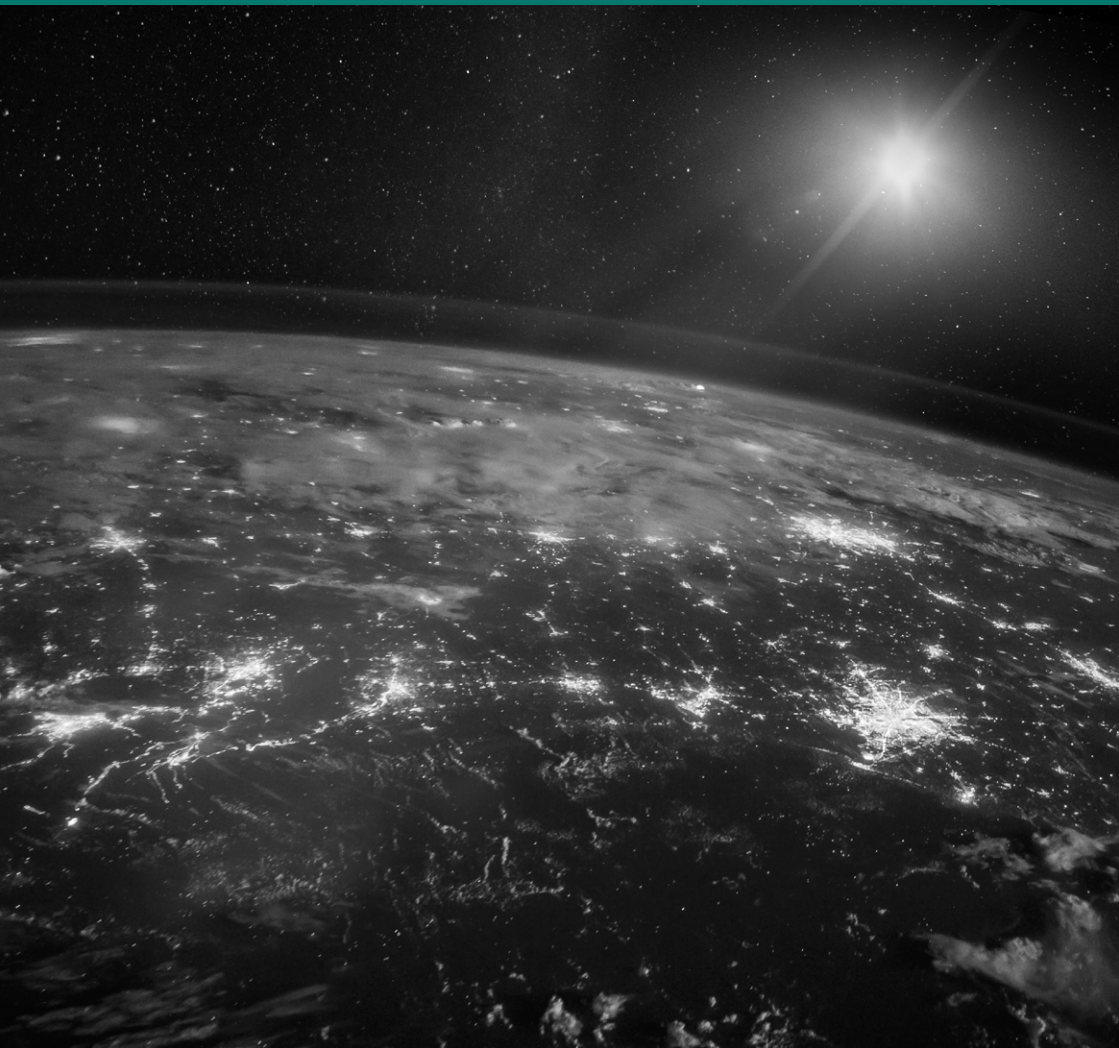


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HFW DISPUTES DIGEST 2024



DISPUTES DIGEST 2024

Welcome to the third annual Disputes Digest, in which we collate our 2024 global HFW LITIGATION and International Arbitration publications in one place.

This edition includes updates from across our Disputes jurisdictions, including England and Wales, BVI, AsiaPac, and the Middle East.

As one of the world's largest and most active Disputes practices, litigation is in our DNA at HFW. We have specialist Disputes lawyers in offices across the Americas, Europe, the Middle East, and AsiaPac, and have continued to ramp up growth across our Disputes network in 2024 with a series of senior hires. We are recognised in all of the major directories, by Chambers UK 2025 as a "leading global Disputes firm" and by the Times Best Law Firms 2025 as one of the UK's top commercial Disputes practices. This is backed up by independent data from litigation analytics platform Solomonick, and also The Lawyer's Tracker, which shows that we have handled more commercial litigation in the English High Court than any other firm over several years.

Similarly, in relation to International Arbitration- we are major users of all of the main international Institutions. Our Disputes lawyers and firmwide reputation for depth and breadth in IA are recognised by all of the key IA directories, including GAR 100.

The firm is also one of the founding members and signatories of both the Greener Litigation Pledge, and Greener Arbitration Campaign - legal industry initiatives to reduce the environmental impact of dispute resolution, and continues to be represented on the Pledge Steering Committee. We are also signatories of the Equal Representation in Arbitration, and work to ensure fairer representation of women in arbitration.

We hope you enjoy reading this Digest, please contact the authors (see the end of this publication), or your usual HFW contact, if you wish to discuss any of the articles.



DAMIAN HONEY

Partner, London

T +44 (0)20 7264 8354

E damian.honey@hfw.com



NICOLA GARE

Knowledge Counsel

(Dispute Resolution), London

T +44 (0)20 7264 8000

E nicola.gare@hfw.com



HFW LITIGATION

Anti-Suit Injunctions

UK SUPREME COURT'S ANTI-SUIT RULING SUPPORTS A FOREIGN-SEATED ARBITRATION

In the recent case of UniCredit Bank GmbH (Claimant) v RusChemAlliance LLC (Defendant), and in what is believed to be the first time that the UK Supreme Court has ruled on anti-suit injunctions (ASI) supporting a foreign-seated arbitration, the Supreme Court upheld an ASI preventing a Russian company from pursuing legal proceedings in Russia, in breach of a Paris-seated arbitration agreement.

[Read more>](#)

Climate Litigation

UPDATE ON KEY CLIMATE LITIGATION AGAINST GOVERNMENTS

Global climate litigation continues apace, in its various different forms. Businesses will be concerned about the potential for litigation, regulatory, or other actions being brought directly against them or their directors and officers. However, governments and authorities should also be aware of the risks posed to them by the large and still growing numbers of claims challenging their climate ambitions, targets, or integration of climate considerations into decisions.

[Read more>](#)

Developments in Banker's Duties: Quincecare

IS RETRIEVAL DUTY AN EXTENSION OF THE QUINCECARE DUTY

In this article we review the English court judgment in CCP Graduate School Ltd v National Westminster Bank Plc and Santander UK Plc, the first English judgment on the Quincecare duty owed by banks to customers and non-customers since the seminal Supreme Court judgment in Philipp v Barclays Bank UK plc.

[Read more>](#)

Enforcement of Judgments

WHAT THE UK'S RATIFICATION OF THE 2019 HAGUE CONVENTION MEANS FOR CROSS-BORDER ENFORCEMENT

On 27 June 2024 the United Kingdom ratified the 2019 Hague Convention on the Recognition and Enforcement of Foreign Judgments in Civil or Commercial Matters (the 2019 Hague Convention), this change will bring practical benefits to parties seeking to enforce against those with assets in, for example, the EU and will give additional comfort to those negotiating English jurisdiction clauses in their contracts.

[Read more>](#)

HONG KONG: BREAKING DOWN BARRIERS – ENFORCEMENT OF MAINLAND JUDGMENTS

Hong Kong further benefits from its status as a Special Administrative Region of the People's Republic of China with an enhanced regime for the enforcement of civil and commercial judgments granted by Courts in the Mainland.

[Read more>](#)

HONG KONG: STAY OF AWARD ENFORCEMENT, CROSSCLAIMS AND “NO SET-OFF” CLAUSES

In CF v SHK and S Listco the Hong Kong Court held that a “no set-off” clause precluded the award debtor from seeking to set-off a connected cross-claim against the award debt, and examined the required threshold that the debtor requires to meet in order to justify staying execution of an enforcement order.

[Read more>](#)

Force Majeure

DEEP DIVE OR SHALLOW SWIM: WHAT IS REQUIRED OF A PARTY IN THE FACE OF FORCE MAJEURE?

The Supreme Court settles the long-running litigation which raised the question whether a party affected by a force majeure event was required to accept an offer of a non-contractual performance in light of a “reasonable endeavours” proviso in the contract to circumvent the state of affairs.

[Read more>](#)

Interest

NEW BRAZILIAN LAW ON INTEREST AND MONETARY CORRECTION IS A WELCOME DEVELOPMENT FOR ANYONE INVOLVED IN BRAZILIAN DISPUTES

As anyone involved in Brazilian Disputes will know, the accrual of interest and use of monetary correction on Brazilian claims has the capacity to significantly increase the claimed amount.

The new Brazilian Federal law 14.905/2024, which was enacted on 1 July 2024, and which will take effect sixty days from that date (i.e. by 1 September 2024), provide much awaited change and clarity on this.

[Read more>](#)

Jurisdiction

PARALLEL PROCEEDINGS – WILL THE DIFC COURTS SEIZE JURISDICTION?

HFW acts for liquidator in high-profile insolvency claims in the DIFC Courts, and successfully defends the jurisdiction challenges

[Read more>](#)

LIBOR

FIRST ENGLISH JUDGMENT CLARIFYING THE REASONABLE ALTERNATIVE TO LIBOR

In a recent judgment that will have been welcomed by financial institutions dealing with legacy LIBOR contracts and parties seeking to rely on relevant interest clauses, the English High Court clarified how to deal with assessing a reasonable alternative to LIBOR, and the role of implied contractual terms in overcoming unforeseen events.

[Read more>](#)

Litigation funding

COURT CHALLENGES ADEQUACY OF ATE POLICY IN SECURITY FOR COSTS RULING

In the recent decision of *Asertis Ltd v Lewis Barry Bloch*, the High Court scrutinised the adequacy of an after-the-event (ATE) insurance policy, which featured an anti-avoidance endorsement (AAE), as a shield against an application for security of costs. The judge found that the ATE policy did not provide sufficient protection due to an inadequate limit of indemnity alongside various termination provisions and conditions that could invalidate the policy. The case is in contrast to the decision last year in *Saxon Woods Investments Limited v Francesco Costa and Ors* [2023] EWHC 850 (Ch) in which the ATE policy was found to provide sufficient security.

[Read more>](#)

Summary Dismissal, Singapore

SINGAPORE COURTS DECIDE RARE APPEAL AGAINST SUCCESSFUL EARLY DISMISSAL UNDER THE SIAC RULES

A recent decision by the Singapore Court of Appeal offers rare insight into how a successful early dismissal application may be treated by the courts in Singapore.

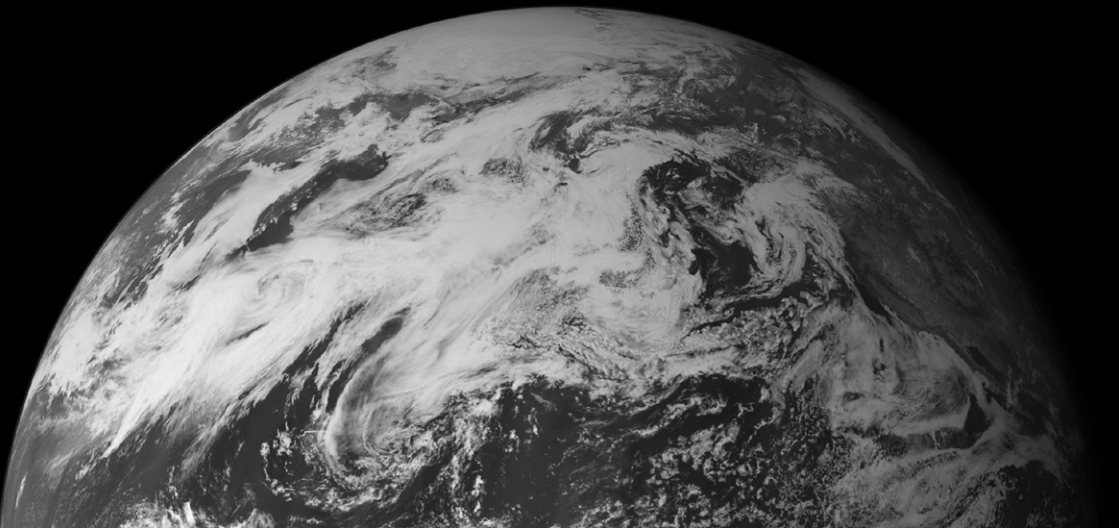
[Read more>](#)

Winding Up Petitions

LANDMARK DECISION ON THE TENSION BETWEEN ARBITRATION AND INSOLVENCY EXTENDS BVI LAW TO ENGLAND & WALES

The Judicial Committee of the Privy Council (the JCPC) recently handed down a landmark decision dealing with a tension, which courts across common law jurisdictions have struggled to reconcile, namely: when deciding whether to stay a winding-up petition in favour of arbitration, to what extent should the court examine the merits on which the debt is disputed?

[Read more>](#)



INTERNATIONAL ARBITRATION

Abu Dhabi International Arbitration Centre

ABU DHABI SETS OUT TO ESTABLISH ITS NEW INTERNATIONAL ARBITRATION CENTRE, ARBITRATEAD

On 20 December 2023, it was publicly announced that Abu Dhabi Chamber of Commerce and Industry has launched a new Abu Dhabi International Arbitration Centre, to be referred to as arbitrateAD. Here is what we know about it.

[Read more>](#)

Abu Dhabi International Arbitration Centre's New Rules

ARBITRATEAD: NEW RULES PUBLISHED AND NEW CENTRE OPEN FOR BUSINESS

The new the Abu Dhabi International Arbitration Centre (arbitrateAD) has published its arbitrateAD Rules which came into effect on 1 February 2024.

[Read more>](#)

Arbitration Appeals

INTERNATIONAL ARBITRATION IN THE DOCK; LESSONS TO BE LEARNED FROM NIGERIA V P+ID

There followed a series of applications for disclosure by Nigeria, in various jurisdictions around the world (including in the US, the Cayman Islands, Cyprus, the England, and the BVI). The documents and information that were obtained ultimately culminated in Nigeria's successful challenge to the arbitration award in the English Commercial Court pursuant to section 68 of the Arbitration Act 1996 (s68AA96) (on the grounds of a serious irregularity).

[Read more>](#)

BITs, Switzerland

SWISS SUPREME COURT UPHOLDS AN ARBITRATION AGREEMENT AND UNEQUIVOCALLY REJECTS ACHMEA AND KOMSTROY DOCTRINE

In a carefully reasoned judgment (Judgment) handed down in April this year, the Swiss Supreme Court upheld an arbitration clause entered into between a company and a member state of the European Union by resoundingly rejecting the application of the 2018 *Achmea* and 2023 *Komstroy* decisions to a Swiss-seated arbitration.

[Read more>](#)

Concurrent Wrongdoer Liability

PROPORTIONATE LIABILITY REGIME APPLIES TO ARBITRATIONS IN AUSTRALIA

Australia's proportionate liability regime enables a judicial body to apportion liability across multiple wrongdoers to a dispute, such that each concurrent wrongdoer is held responsible for their respective share of loss and damage suffered by the plaintiff. There had been consensus for some time that the regime did not apply to arbitration, including because an arbitral tribunal does not have the power to join concurrent wrongdoers, unless consent has been obtained from all concurrent wrongdoers and the parties to the arbitration.

[Read more>](#)

Developments in 2024

HONG KONG ARBITRATION: 2024 – AN EXCITING YEAR AHEAD

Hong Kong had a busy 2023 of arbitration and is looking forward to an exciting 2024 ahead.

[Read more>](#)

Developments in 2024: Paris

A BUSY YEAR FOR ARBITRATION IN PARIS: KEY DEVELOPMENTS IN THE FIRST HALF OF 2024

2024 has been an important year for arbitration in Paris, marked by a landmark court decision concerned with bias, an award from the Court of Arbitration for Sports emanating from the Olympics, and the creation of new arbitration venues. In this article we discuss all of these key developments.

[Read more>](#)

Dubai

THE CHANGING LANDSCAPE OF DUBAI ARBITRATION

Dubai has seen some key developments in recent years that have had a positive impact on arbitration in the region. In this article we look at the development of the Dubai International Arbitration Centre and the impact of Decree No. 34.

[Read more>](#)

England's New Arbitration Act

REFORM OF THE 1996 ENGLISH ARBITRATION ACT – THE SIX KEY PROPOSED AMENDMENTS

The Law Commission's (the Commission) Review of the 1996 English Arbitration Act (AA1996) is intended to modernise arbitration laws in England and Wales and to ensure that arbitration remains fit for purpose, and continues to support England and Wales as a leading forum for commercial arbitration.

[Read more>](#)

ENGLISH ARBITRATION ACT UPDATE

In the Q2 edition of HFW's International Arbitration Quarterly we wrote about the 'Reform of the 1996 English Arbitration Act- The Six Key Proposed Amendments', which reforms were identified by the Law Commission's 2022-2023 Review, and became the subject of the Arbitration Bill put before parliament by the previous UK government in 2023.

[Read more>](#)

ICC Statistics, Switzerland

ICC'S 2023 STATISTICS CONFIRM SWITZERLAND AS A PREMIER ARBITRATION JURISDICTION

The Dispute Resolution Statistics of the International Chamber of Commerce (ICC) always make for interesting reading. The ICC is one of the largest International Arbitration Institutions, therefore its statistics give a good indication of what is happening in that part of the arbitration ecosystem.

[Read more>](#)

Investment Treaty Arbitration: Australia

CLIVE PALMER V THE COMMONWEALTH OF AUSTRALIA

Clive Palmer is a prominent mining magnate and self-described "proud Australian". He is the leader of an Australian political party, the United Australia Party. He was also a senator in the Australian parliament between 2013 and 2016. How then is his company pursuing an arbitration against Australia for violation of an investment treaty?

[Read more>](#)

Jurisdictional challenges and SIAC arbitrations

RELIANCE INFRASTRUCTURE LTD V SHANGHAI ELECTRIC GROUP

Jurisdictional challenges and SIAC arbitrations: the Singapore International Commercial Court's latest ruling.

[Read more>](#)

New Arbitration Law in Papua New Guinea

PAPUA NEW GUINEA ADOPTS NEW ARBITRATION LAWS

On July 9 2024, Papua New Guinea's (PNG) Arbitration (Domestic) Act 2024 (Domestic Arbitration Act) and Arbitration (International) Act 2024 (International Arbitration Act) came into force (collectively Arbitration Acts).

[Read more>](#)

Privity of Contract, India

THE INDIAN SUPREME COURT FINDING ON THE 'GROUP OF COMPANIES' DOCTRINE: WHAT THIS MEANS FOR ENERGY SECTOR ARBITRATIONS

In *Cox and Kings Ltd. v. SAP India Pvt. Ltd.*, the Indian Supreme Court upheld the 'Group of Companies' doctrine, allowing arbitration agreements to bind non-signatory affiliates. We consider this from the perspective of energy sector project contracts and any arbitrations which might arise. There are unavoidable realities when it comes to negotiating these contracts and performing them, typically involving different entities from a single company group, with the expectation that only the signatory to the contract will be party to any arbitration. In this update we assess balancing these realities against what the Indian Supreme Court has expressed unequivocally as the Indian law position.

[Read more>](#)

Tribunal Jurisdiction

MULTI-CONTRACT DISPUTES AND CONFLICTING DISPUTE RESOLUTION CLAUSES: HONG KONG COURT CONFIRMS THE PROPER APPROACH TO DETERMINE THE TRIBUNAL'S JURISDICTION

The Hong Kong Court has clarified the proper approach when analysing dispute resolution clauses in related contracts and the scope of the tribunal's jurisdiction, confirming that the "*centre of gravity*" of the issue in dispute is a key factor when deciding which resolution clause is "*closer*" to the issue and ought therefore be applied. The Court also commented on issues which can arise when the notice of arbitration is improperly drafted.

[Read more>](#)

Witness Evidence, Australia

OBTAINING SUBPOENAS AGAINST THIRD PARTIES IN AID OF ARBITRATION IN AUSTRALIA

In Australia, applications for the production of documents or the provision of evidence by third parties to an arbitration are usually decided *ex parte* and on the papers. While any person with a sufficient interest may apply to set such a subpoena aside, there is no practical or legal requirement to give such parties an opportunity to oppose the issue of the subpoena.

[Read more>](#)

Witness Evidence, England

OBTAINING SUBPOENAS AGAINST THIRD PARTIES IN AID OF ARBITRATION IN ENGLAND

The English courts have a long history of supporting arbitration proceedings, including in securing attendance of witnesses and production of witness evidence both from parties and non-parties to the arbitration.

[Read more>](#)

AUTHORS

For more information please contact:

**DAMIAN HONEY**

Partner, London

T +44 (0)20 7264 8354

E damian.honey@hfw.com

**SARAH HUNT**

Partner, Geneva

T +41 (0)79 281 5875

E sarah.hunt@hfw.com

**ANDREW WILLIAMS**

Partner, London

T +44 (0)7789 395 151

E andrew.williams@hfw.com

**RICK BROWN**

Partner, London

T +44 (0)7855 766885

E rick.brown@hfw.com

**KAREN CHEUNG**

Partner, Hong Kong

T +852 6366 9988

E karen.cheung@hfw.com

**KEVIN WARBURTON**

Partner, Hong Kong

T +852 3983 7629

E kevin.warburton@hfw.com

**BRIAN PERROTT**

Partner, London

T +44 (0)20 7264 8184

E brian.perrott@hfw.com

**BERNARDO DE SENNA**

Partner, Rio de Janeiro (CAR)*

T +55 21 3550 9018

E bernardo.desenna@car-law.com.br

**MARCELO BELLUCI**

Partner, Sao Paulo (CAR)*

T +55 11 4550 7806

E marcelo.belluci@car-law.com.br

**ADAM STRONG**

Partner, London

T +44 (0)7920 806736

E adam.strong@hfw.com

**SUZANNE MEIKLEJOHN**

Partner, Singapore

T +65 9025 1894**E** suzanne.meiklejohn@hfw.com**EDWARD BEELEY**

Partner, Hong Kong

T +852 5181 4956**E** edward.beeley@hfw.com**SLAVA KIRYUSHIN**

Partner, Dubai

T +971 56 255 8711**E** slava.kiryushin@hfw.com**NICK BRAGANZA**

Partner, Dubai

T +971 52 923 3335**E** nicholas.braganza@hfw.com**WILLIAM HOLD**

Partner, Geneva

T +41 (0)79 903 9388**E** william.hold@hfw.com**JO DELANEY**

Partner, Sydney

T +61 (0)481 436 812**E** jo.delaney@hfw.com**PETER SADLER**

Partner, Perth

T +61 (0)451 700 481**E** peter.sadler@hfw.com**DAN PERERA**

Partner, Singapore

T +65 9635 6824**E** dan.perera@hfw.com**JULIEN FOURET**

Partner, Paris

T +33 (0)6 27 61 51 59**E** julien.fouret@hfw.com**GAËLLE LE QUILLEC**

Partner, Paris

T +33 (0)6 03 32 14 69**E** gaelle.lequillec@hfw.com**PATRICK KNOX**

Legal Director, London

T +44 (0)7917 663862**E** patrick.knox@hfw.com**NICOLA GARE**

Knowledge Counsel

(Dispute Resolution), London

T +44 (0)20 7264 8000**E** nicola.gare@hfw.com**KATE AYRES**Knowledge Counsel (Insurance/
Reinsurance), London**T** +44 (0)20 7264 8120**E** kate.ayres@hfw.com**CATRIONA HUNTER**Professional Support Lawyer,
Hong Kong**T** +852 6385 4935**E** catriona.hunter@hfw.com**GEOFFREY CONLIN**Foreign Law Consultant Rio de
Janeiro (CAR)***T** +55 (11) 97531 2677**E** geoffrey.conlin@car-law.com.br**SADHVI MOHINDRU**

Senior Associate, Singapore

T +65 9839 6536**E** sadhvi.mohindru@hfw.com

**JAMES HENSON**

Senior Associate, Hong Kong
T +852 5188 7900
E james.henson@hfw.com

**BEN PYNT**

Senior Associate, Perth
T +61 (0)498 618 980
E ben.pynt@hfw.com

**CAMILLE DUPUY**

Senior Associate, Paris
T +33 (0)6 43 39 48 17
E camille.dupuy@hfw.com

**NIVVY VENKATRAMAN**

Senior Associate, Sydney
T +61 (0)413 398 009
E nivvy.venkatraman@hfw.com

**JOY HARB**

Associate, Paris
T +33 (0)1 44 94 40 58
E joy.harb@hfw.com

**NATALIA OTLINGER**

Associate, London
T +44 (0)7917 241719
E natalia.otlinger@hfw.com

**JOSHUA PREST**

Associate, London
T +44 (0)7867 441072
E joshua.prest@hfw.com

**LUYAN YU**

Associate, Sydney
T +61 (0)452 412 917
E luyan.yu@hfw.com

**CURTIS PAK**

Associate, Hong Kong
T +852 9174 6800
E curtis.pak@hfw.com

*HFW in cooperation with Costa, Albino & Rocha Sociedade de Advogados (CAR)

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