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## As Chinese take business disputes abroad, ships caught in legal web

- \* China's biggest cruise ship impounded in South Korea due to legal row
- \* Disputes between China shipbuilders and shipowners up in last 6 months-arbitrator
- \* Firms use overseas branches, subsidiaries for arbitration to skirt China ban
- \* Singapore, Hong Kong to benefit from growing number of disputes

By Keith Wallis

SINGAPORE, Sept 30 When more than 2,000 passengers aboard China's biggest cruise liner found their ship detained in a South Korean port and their holiday in ruins, they had unwittingly become pawns in a five-year legal row between two Chinese shipping firms.

The impounding of the luxury liner Henna earlier this month in a foreign country is the type of incident that may occur more frequently in the future as Chinese firms turn overseas to try to resolve legal disputes and recover debts.

In an embarrassment for China's fledgling cruise industry, most passengers had to be flown home after they were stranded for three days in Jeju island in South Korea. The cruise liner was released only after a bond was posted.

Chinese shipbuilders and shipowners are taking a growing number of commercial disputes abroad to bypass a domestic legal system they fear may not guarantee a fair hearing.

Weak enforcement of laws, pressure from well-connected corporate bosses and political interference are some of the hurdles they face, lawyers say.

"In order to avoid local interference at different levels within China, there are Chinese companies which have chosen to give up having arbitration within China and instead choose to arbitrate outside China," said William Leung, head of Hong Kong law and arbitration firm William K.W. Leung & Co.

This is giving a boost to newer centres providing arbitration services such as Hong Kong and Singapore, helped by their proximity to the mainland and familiarity with Chinese firms.

But the involvement of foreign jurisdictions in disputes sometimes has unforeseen consequences, as the Jeju case showed.

A South Korean court ordered the Henna impounded on behalf of creditor Shagang Shipping Co Ltd which said the ship's owner HNA Group Co. Ltd owed \$58 million on lease payments related to another vessel. The claim had been upheld by arbitration in London.

The cruise liner was set free after HNA put up a \$2.7 million bond, Shagang Shipping said. HNA did not comment at the time.

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SUPER BOWL

Disputes in China are rising after industries such as shipbuilding boosted capacity to benefit from a decade-long commodities boom but are now facing slowing growth in the world's second-largest economy.

In July, China Rongsheng Heavy Industries Group, the nation's largest private shipbuilder, sought financial help from Beijing and big shareholders after cutting its workforce and delaying payments to suppliers.

Shipping companies, on the other hand, have struggled with low charter rates for iron ore, coal, grain and other commodities that are shipped in bulk.

In 2012, 196 cases were handled by the Hong Kong International Arbitration Centre of which 114 involved Chinese firms. By comparison there were 178 arbitrations in 2011 of which 87 involved mainland companies.

#### EXPANDING SUPPLY-CHAIN ROLE

Disputes between shipowners and shipbuilders are up in the last six months, said Arthur Bowring, managing director of the Hong Kong Shipowners' Association and a qualified arbitrator.

These have involved shipowners' claims against cash-strapped shipyards after vessels were delivered late, Bowring said.

The deepening of China's role in the transport and trade of commodities is another factor behind disputes. For instance, Bank of China, China's fourth-largest lender by assets, has set up an onshore commodities trading unit.

"We are seeing increased involvement of Chinese businesses in the commodities supply chain, as traders, transporters and financiers, rather than purely as consumers, which will bring them into more disputes when market conditions become volatile," said Will Barber, partner at international law firm Reed Smith Richards Butler in Hong Kong.

London has been the traditional centre for maritime arbitration because shipping contracts have been governed by English law. But other cities such as Singapore and Hong Kong have become important arbitration centres as a result of the commodities boom and China's influence on the sector.

Chinese firms are using their overseas branch offices or subsidiaries to circumvent a legal ban on local companies locked in domestic disputes from going overseas to arbitrate, said Grace Hou, an associate at law firm Troutman Sanders.

#### ENFORCEMENT HEADACHES

For its part, China has been overhauling its arbitration system for firms seeking to enforce foreign arbitration awards against Chinese firms, lawyers said.

Any decision by a local court not to recognise or enforce a foreign arbitration award now needs to be reported to and approved by the People's High Court in each province and, if upheld, also approved by the Supreme Court in Beijing.

But arbitration in China has become messier since the China International Economic and Trade Arbitration Commission (CIETAC) split last year into three autonomous bodies in Beijing, Shanghai and Shenzhen.

Adding to the confusion, CIETAC in Beijing has set up new arbitration bodies in Shenzhen and Shanghai. This means there are doubts about the recognition and enforcement of decisions by the old and new bodies.

"Enforcement of an arbitral award made by CIETAC Shenzhen or CIETAC Shanghai appears to be a minefield," said Leung of William K.W. Leung & Co.



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A source at CIETAC Shenzhen, which has changed its name to the Shenzhen Court of International Arbitration (SCIA), said the organization was not aware of any problems enforcing decisions made under its authority.

Liu Xiaochun, secretary general of SCIA, did not immediately respond to requests for comment.

China's Supreme Court is expected to soon issue guidelines on jurisdictional issues and the enforceability of awards by the Shanghai and Shenzhen arbitration courts, legal sources said.

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